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PROTECTION OF MINORITIES

Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities

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Introduction

1. This study on peaceful and constructive solutions to minority situations is based on principles contained in universal human rights law, concerned above all with the equality and dignity of every human being.

2. Human rights set limits to group rights both of majorities and of minorities. The present study is based on the understanding that the reason why rights of members of minorities are required is that they make explicit the limits on the power of majority groups, which otherwise might use their majority position to establish or maintain privileges for themselves.

3. Minority rights must, however, never be construed in ways which destroy the basic principles of equality. The State should be a common home for all ethnic, religious and linguistic groups residing there, enjoying equality in fact, none of them being second-class citizens. Apartheid in South Africa has demonstrated how an intolerant and intransigent minority can prevent the enjoyment of equality by members of the majority.

4. Nearly all States are pluri-ethnic or pluri-religious and will remain so. If anything, national societies will become more, not less, pluralistic, owing to the impact of human rights and democracy. The solution to minority problems cannot and should not be to establish for ethnic groups their own "purified" State or quasi-State, as sought in the present destruction of Bosnia.

5. The Sub-Commission on Prevention of Discrimination and Protection of Minorities was established to find ways in which States and the international community can solve the dual task of preventing discrimination - and thereby upholding the equality of every human being - and of protecting minorities so that every member of any group can uphold his or her identity as far as compatible with human rights. It is our task to confront the entrepreneurs of hatred and xenophobia, and to indicate ways in which equality and dignity can be ensured within the framework of territorial integrity and political stability.

6. We are at present in the midst of a tumultuous period in which ethnic and religious conflicts appear more grave than for decades. The ethnocentric forces released during recent years have become irrational in their hatred and have resorted to extreme barbarism. The ongoing processes of ethnic cleansing and territorial "purity" constitute a direct challenge to the foundation of human rights, the principle that all human beings are born free and equal in dignity and rights and that no discrimination shall take place on grounds, of race, colour, ethnic or national origin.

7. It is difficult to predict when present waves of violence will subside. Two urgent tasks face the international community. One is to develop the capacity for prevention, peacekeeping, and peace enforcement where required. Recommendations on ways to strengthen the United Nations capacity in this field were presented by the Secretary-General in his "Agenda for peace", 1992. Those recommendations need urgently to be implemented if we are to avoid repetitions of the dismal failure to halt aggression and carnage in Bosnia and Herzegovina.

8. The other task is to encourage States, on the basis of international law, to find appropriate accommodations between the different ethnic, religious and linguistic groups in society, to the end that they all feel at home and none consider themselves to be second class resident or citizen. This study is devoted to this second task. As expert members of this United Nations body, we should build on basic principles of world order as contained in the Charter of the United Nations and in the universal human rights instruments.

9. The group conflicts at present tearing apart or destabilizing sovereign States in several parts of the world, bringing massive human rights violations, in their wake, should not be allowed to overshadow the fact that in most countries different ethnic and religious groups co-exist, and do so quite peacefully. The attention of the media to the most dramatic cases, while indeed necessary, should not lead us to the misconception that nothing that can be done, that we are doomed forever to hatred and xenophobia. On the contrary, much inspiration can be derived from the constructive developments that have taken place in so many parts of the world, where the different groups have accommodated to each other, live peacefully side by side, preserve their own identities and yet adapt to modern and new conditions, and develop bonds of inter-marriage and reciprocal understanding. The material collected for this study indicates that there is a growing willingness by States in most continents to accommodate legitimate minority concerns. In response, members of many minority groups have become less militant and have engaged in constructive dialogue with the government and the other ethnic groups.

10. In a not too distant future the bridge-builders on both sides will replace the hard-line xenophobists and ethno-nationalists, whether they belong to the majorities or the minorities. It will take time, and the struggle will be difficult. Much work has to be done to establish conditions under which group conflicts can be peacefully handled with respect for the territorial integrity of sovereign States. Hopefully, this study can be a contribution to that end.

Background to the study

11. The Sub-Commission, in its resolution 1989/44 of 1 September 1989, decided to entrust Mr. Asbjørn Eide with the preparation of a report on national experience regarding peaceful and constructive solutions of problems involving minorities.

12. The resolution was adopted following a discussion of the working paper prepared by Ms. Claire Palley (E/CN.4/Sub.2/1989/43), which in turn was prepared in accordance with Sub-Commission resolution 1988/36. In that resolution, the Sub-Commission, concerned that many of the situations brought to its attention involved questions of the assimilation, integration or autonomy of minorities, and reaffirming, in accordance with the Charter, the basic importance of sovereign equality and the inviolability of the national unity and territorial integrity of States, had decided to embark upon an examination of possible ways and means to facilitate the peaceful and constructive resolution of situations involving racial, national, religious and linguistic minorities.

13. The first outline for the study was submitted in 1990 (E/CN.4/Sub.2/1990/46). It indicated ways in which to approach the study and discussed the basic issues involved, particularly the relationship between non-discrimination and minority rights, and the diversity of situations in which minority issues arose.

14. The first progress report was submitted in 1991 (E/CN.4/Sub.2/1991/43). It explored in some detail the six guidelines which had been established for the study (non-discrimination and full participation; the rights of minorities and the stability of States; the dangers of ethnic conflict for security; negative and positive measures; the role of the development process; and protection of the rights of majorities).

15. The second progress report was submitted in 1992 (E/CN.4/Sub.2/1992/37) and concentrated on two basic questions: the problem of the definition and classification of minorities, in the light of policies pursued by States and by minorities; secondly, suggestions for a framework of analysis of the range of legitimate options for States and for minorities in the search for peaceful and constructive solutions.

16. The present, final report consists of two main parts: the first (chap. I) a consolidated framework for the evaluation of approaches to minority situations. Issues dealt with at some length in preceding reports are only briefly referred to here. The second part (chap. II) consists of a review of practices which can be observed in some countries, based primarily on the replies to the questionnaire which was sent out, and to which responses have arrived from 26 countries. Information from other sources, including relevant extracts from State reports under human rights conventions, has also been included.

17. This is not a study of minority rights as such, but on ways in which majorities and minorities can find constructive ways to live together within the boundaries of sovereign States, based on principles of contemporary international law. There is no assumption, in this study, that problems always arise from the side of the majority or of the government. Indeed, there are many notable cases where intolerance and exclusiveness arises from within minority groups. Both sides should be subject to the overarching concern for equality and the right to preserve their identity within the common home which is the State in which they live.

18. The study does not claim to present a comprehensive view of approaches to minority situations worldwide. That would take much more space and much more work. Unfortunately, in spite of resolutions adopted to that effect by the Sub-Commission and the Commission, owing to lack of resources the Centre for Human Rights has not been able to provide assistance, in the form of consultancy, in the preparation of this report. While members of the secretariat have kindly collected and transmitted documents to the Special Rapporteur, the substantive work has been left entirely to him. This explains why a more comprehensive presentation has not been possible.

19. This study can only be the beginning of a process. The Sub-Commission and/or the Commission will have in future years to devote much more attention to the problem of the peaceful handling of minority situations. Group

conflicts are on the rise. They are profoundly violent and destabilizing, both for affected States and for the international legal order. The adoption by the General Assembly in December 1992 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities has proved an instrument with which to work. It now requires a determined and consistent follow-up within the human rights organs of the United Nations.

20. The recommendations of the study will be submitted as addendum 4 to the present report.

I. THE ISSUES AND THE FRAMEWORK FOR SOLUTION

A. When is there a "situation involving minorities"?

1. Definition: What groups constitute a minority?

21. The previous reports have not contained a definition of minorities. In the 1992 progress report (E/CN.4/Sub.2/1992/37), however, the history of the efforts to define minorities was outlined: the first formulations used by the Sub-Commission (para. 48); the definition proposed by the Special Rapporteur, Mr. Capotorti (para. 50) and by a member of the Sub-Commission subsequently entrusted with the task of proposing a definition, Jules Deschênes (para. 51). No definition is contained in the 1992 Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

22. The reasons why a definition is not only difficult, but possibly also of little usefulness, were set out in paragraphs 55 to 101 of the 1992 progress report, together with a classification of different groups which might or might not be included in the category of minorities. It is doubtful whether a definition can be made in the abstract. For particular purposes, such as a precise, legally binding instrument on rights of (members of) certain minority groups, definition may be required of the groups intended as beneficiaries of the instrument.

23. An abstract definition is difficult because of the need to distinguish between some relatively objective criteria on the one hand and some contextual factors on the other. For many groups, the designation "minority" is objectionable because it perceived to imply some kind of secondary citizenship, if the members are given citizenship at all.

24. The Universal Declaration of Human Rights should be seen as an instrument for emancipation, to ensure that equal rights are provided for all, irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. On this basis, efforts have been made not only to ensure the freedom, but also the empowerment of human beings everywhere - to ensure that they are not restricted in the enjoyment of equal opportunities and equal participation in society. Economic and social rights extend the genuine participation of groups who have been socially marginal; the elimination of discrimination based on sex extends the participation and opportunities of women; the rights of the child extend the possibility of the active participation of the child from an early stage; the elimination of discrimination based on race (including ethnicity) is one of the most important commitments ever made to

emancipation and to extending participation in society and the enjoyment of equal rights; the elimination of religious intolerance sets members of different religious groups free to deepen their reflection on spiritual matters and to participate creatively in the moral issues facing human kind under changing circumstances.

25. The issue of minority rights should really be conceived of as a prolongation of the process of emancipation and empowerment, allowing all ethnic, religious and linguistic groups to combine the development of their own culture, language and faith with an active and creative participation in the society at large. To use the designation "minority" might indicate that there is something wrong with the society at large, that it has not been able to accommodate fully the presence of different groups, large and small.

26. It should be made clear that this particular study deals only with ethnic, linguistic or religious minorities. There are numerous other groups which may consider themselves - or be considered by others - as minorities, and they may have good reasons. The issues involved are likely to be different from those of the present study and could be examined in separate studies. The concerns here are related only to groups whose common bonds are ethnic, religious or linguistic.

27. An implicit working definition has been underlying this study throughout and should now be spelled out. It is a very open and general definition, to make it possible to examine all minority situations of practical importance. It is not intended as a legal definition. It is based on the conviction that not all minorities - or their members - have the same rights; some have only minimum rights, while others have or should be granted more substantial rights. This becomes apparent also in the more substantive standard-setting efforts now under way, including those of the Council of Europe. To illustrate: the members of any minority have the right to use their own language, in private and public, with anyone who is prepared to communicate with them in that language; but the members of not all minorities have the right however to receive state-funded education in their own language, or to use their own language in communicating with public officials. The scope of rights is contextual. A wide definition allows for appropriate qualifications in regard to each right and under which conditions they shall apply.

28. While all individuals are to be treated on a basis of equality, the same does not hold for groups. Their situation, origin and problems differ vastly one from the other and the responses must therefore also be different. Members of all minorities, however, have certain minimum rights which are derived from the general human rights system.

29. The working definition reads as follows:

> "For the purpose of this study, a minority is any group of persons resident within a sovereign State which constitutes less than half the population of the national society and whose members share common characteristics of an ethnic, religious or linguistic nature that distinguish them from the rest of the population".

30. The definition includes only residents within a sovereign State. The peoples of colonial territories cannot as such be treated as minorities since they do not live in a sovereign State, but in a Non-Self-Governing Territory. As a people (meaning the population) of a Non-Self-Governing Territory they have, as a collectivity, a right to self-determination including a right to become fully independent, should they so wish. Similarly, the population living in territories illegally occupied since the adoption of the Charter of the United Nations, and where the occupation has not led to an incorporation accepted by the United Nations, will not as a group be considered as a minority for the purpose of this study; as the population of an occupied territory they normally have the right to (restored) independence should they so wish. There can of course be majority/minority relationships within the populations of Non-Self-Governing Territories. Since the problem of statehood is not yet determined in those cases, those issues will not be examined here.

31. The working definition implies that a "minority" can exist without a "minority situation". A group numerically smaller than half the population can be perfectly comfortable in a society and experience no problems at all; in such cases it would be meaningless to refer to a "minority situation". In particular, it would be disastrous to assume that groups can only be satisfied when they constitute the majority in a State and that they therefore have to engage either in population transfer or in secessionist activities.

32. The definition chosen includes members of groups which also go by other generic names. A classification of groups was given in the 1992 report (paras. 55-72); only a few observations will be added here. The use of other names than "minority" often expresses stronger claims. Nevertheless, the group is a minority even if it demands - and is entitled to - more than the minimum minority rights.

33. The definition includes "nations" and "nationalities", in so far as those members of a group referred to as "nation" or "nationality" living within the sovereign State concerned constitute less than half the population. To illustrate: members of the Serbian "nation" living in Bosnia and Herzegovina and Croatia constitute minorities within those States.

34. It may be necessary, here, to recall the ambiguities in the notion of "nation", which is closely related to "nationalism", examined at greater length in the 1992 report (paras. 16-22).

35. The two meanings of "nation" will here be given different names. "Nation" will be understood as the aggregate, permanent population of a sovereign State. The nation in Bosnia and Herzegovina consists of Moslems, Serbs, Croats, other minorities, and persons of mixed descent. It is a technical and legal concept, linked to the notion of citizenship in its legal sense. Article 15, of the Universal Declaration of Human Rights, stating that everyone has the right to a nationality, means that everyone has the right to hold the citizenship of a State, which makes her or him a part of the nation. It carries no necessary implication of solidarity among the different groups within society; even when they are antagonistic towards each other they are part of the nation simply by being citizens thereof. The obvious task then would be to pursue confidence-building measures in order to increase cooperation among the different ethnic groups forming the nation.

36. An entirely different notion of "nation", based on ethnicity rather than citizenship, is also widely used, and will here be referred to as "ethno-nation". This is a more or less indeterminate group, sometimes straddling the territories of two or more States, of persons who consider themselves to share certain common traditions and characteristics. Of particular importance is a common language or a common religion, and a perceived common history. It is to some extent an imagined community, a reconstruction of history to fit present aspirations, but it does involve some objective past linkages. The ethnic identity may be held with varying degrees of conviction at different times; membership of the group may in some conditions or in some periods be considered important and in others be considered much less important. It is a political and subjective concept.

37. Not all ethnic groups consider themselves an "ethno-nation". For a group to consider itself as a "nation" something more than ethnic identity is implied: a particularly strong feeling of cohesiveness, a common destiny and an implied desire for political control over its own fate.

38. The most serious group conflicts arise when one or several of the ethnic groups within a multi-ethnic State seek to create congruence between the nation in its technical sense and the ethno-nation. This leads to discrimination, hatred, violence and ethnic cleansing as vividly demonstrated in recent conflicts.

39. The definition chosen for this study includes "peoples" when they constitute numerical minorities within a sovereign State, but not the "people" of a colonial or occupied or otherwise Non-Self-Governing Territory, as pointed out above.

40. The definition therefore also includes indigenous peoples, it being recognized that they may have stronger rights than other minorities in areas where they live compactly together.

41. It includes not only settled groups but also recent immigrants, although those who have arrived after the independence of the State may have somewhat lesser rights than those who were already settled there before the State emerged or re-emerged as an independent State.

42. The definition chosen includes not only citizens but also non-citizens, it being recognized that non-citizens may have lesser rights than the citizens. As a general rule, non-citizen members of minority groups should have at least passive rights, such as the right to use their own language in private and public in communication with other members of the same linguistic group, whether they are citizens or not. Similarly, adherents to a minority religion should be allowed to practise that religion together with other members of the same religious group, whether they are citizens or not. They must also have the right to protection, should they be subjected to attacks by members of other religious groups. What is doubtful, however, is whether non-citizen members of an ethnic or religious group are entitled to positive measures, for example, state-supported education in their own language. It is submitted that long-standing residents, the majority of whom are gainfully employed and pay their taxes, should have no lesser right to educational

support than members of the same linguistic group who already have become citizens. It is thus possible that the distinction should not be between citizens, but between those who have been settled for a long time and those who are very recent arrivals, whether or not they have obtained citizenship.

43. Many efforts at defining minorities restrict them to citizens. The present Council of Europe draft for an additional protocol or a convention is thus restricted. There is, on the other hand, no such limitation in the (United Nations) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities; nor is there a restriction to citizens in the International Covenant on Civil and Political Rights, either in general (article 2 refers to "all individuals within its territory and subject to its jurisdiction") or in article 27.

2. When does the presence of a numerical minority constitute a "situation"?

44. In general terms, a situation arises when there is a widespread sense of frustration among members of minority groups, and that frustration is related to their belonging to the group. Whether or not it is a justified frustration may have to be closely examined; in some cases it may be the product of ambitious group entrepreneurs whose concern is not the promotion of human rights but power, exclusiveness or dominance. Consequently, closer inspection is required. The frustrations can be analysed in terms of the claims made.

45. One set of claims by minorities which are fully justifiable are claims that, as a group of people, because of their physical or cultural characteristics, they are singled out from others in the society in which they live for differential and unequal treatment and therefore regard themselves as the subject of discrimination. The discrimination they experience can be of many kinds: threats to personal security (for example, attacks on migrant workers in Europe), discrimination in employment, housing, access to property, etc. An illustration of this would be the situation of Afro-Americans in the United States or of Romanies in a number of European countries. In such cases, persons who are considered to belong to a minority seek equality, as individuals, with all other individuals in society. A special case is that of persons who are denied citizenship after independence and consequently consider themselves the subject of discrimination in a number of fields. The problem can now be observed in a number of States emerging out of the dissolution of the Soviet Union and Yugoslavia, but has in some cases also been experienced after decolonization. A different category consists of migrant workers and other long-standing resident aliens who have arrived in independent States which they knew were not their own; they are also at times subjected to severe discrimination. The States in which they reside are not always able to offer them full protection.

46. The second set of claims by minorities are claims that, as members of a group, they are not allowed or do not have the conditions necessary to preserve their identity (language, religion, cultural practices). In some cases, the claims go further, the members of the group demanding a degree of autonomy over their own affairs (on a non-territorial basis), for example, the application of civil laws based on the religion of the group (family, inheritance, etc.), rather than the laws adopted by the national legislature.

47. The third set of claims are territorial claims: for local self-government, more or less extensive, sometimes including the right to adopt their own laws or to apply the customary laws of the group concerned; or claims for extensive territorial autonomy for the group, with its own governmental institutions (legislative, executive including police and local security forces, and judiciary).

48. Lastly, the most extreme claims are those for territorial dismemberment and secession - either to join another State, or to set up a new sovereign State on part of the territory of the sovereign State in which they live.

B. When are solutions peaceful and constructive?

1. When is there a "solution" to situations involving minorities?

49. Few group conflicts can be fully "solved". Indeed, it may be dangerous to search for final solutions. The historical examples should give us a warning. There are some who argue that ethnically homogeneous groups constitute the best solution. Sometimes, drastic measures have been used when groups have appeared not to be willing to live together. Ethnic cleansing, massive population transfers and warfare culminating in genocide are part of the record. Some might consider this a "solution", but it would obviously be unacceptable in terms of present international law and morality. The search for "perfect" solutions constitutes a serious danger that massive human rights violations will result.

50. Coexistence within sovereign States between different ethnic, religious or linguistic groups is the rule rather than the exception. Nothing short of massive violence can change that fact. Group coexistence is likely to be disliked by some of the less tolerant members of the various groups; some friction is likely to flare up from time to time. It is nevertheless the assumption underlying this study that most people, most of the time, prefer to live where they do live, irrespective of the fact that they constitute a minority within a larger society, provided they are given treatment equal to that enjoyed by the members of the majority. Only a handful of ethnic or religious entrepreneurs would, under such circumstances, mobilize for violence in order to push out the other groups, to secede or join up with another State by redrawing borders.

51. Special problems arise in periods of substantial change, such as has recently occurred as a result of the dissolution of the federations of the Soviet Union and Yugoslavia. That dissolution has coincided in time with a dramatic political transformation due to the collapse of the established ideology which served to legitimize the power of the State and far-reaching change in the economic system. These factors taken together created an exceptional situation of uncertainty for the different ethnic groups, which in several places gave ethnic entrepreneurs an opportunity to mobilize for violent conflict and ethnic cleansing. Those were not normal circumstances, however, and should not give rise to conclusions about the inevitability of ethnic violence.

52. Even under normal conditions, some tension is likely to occur from ti to time when different ethnic and religious groups live together. Conflict intrinsic to group relations; so is cooperation. Non-violent manifestation of conflict are sometimes even necessary to obtain understanding of a need remove barriers for better cooperation in the future. The real issue is therefore not the existence of some degree of conflict, but the way in whic it is handled, resulting either in a willingness to build bridges based on equality or escalation into open violence.

53. Different personalities relate differently to unavoidable tensions. opt for provocation, militancy and confrontation. Others seek avenues for bridge-building. If violence starts, however, it can quickly develop its o momentum, where security forces and violent opposition groups use the viole committed by the other side to justify further violence.

54. To avert such processes, all feasible steps should be taken to ensure that each group is able to preserve its identity and self-respect in the common task of building a national society which includes all residents of State, irrespective of their background.

55. Under the theory of social contract, States and legitimate government were, rather idealistically, portrayed as having emerged as the product of voluntary agreement among free human beings in order to solve common proble such freedoms being retained as were compatible with the functioning of government by the people. Reality is quite different. States have emerged and their borders have been set by a multitude of factors, including conque colonialism and feudal struggles. Even in the few cases where States have emerged as a consequence of joint, free action by a self-selected group of human beings, the present borders invariably also contain some groups who h no choice but who were forced into submission and who now live within those borders.

56. With the adoption of the Charter of the United Nations and the Univers Declaration of Human Rights, a new foundation was established for world ord Sovereign States were to be protected against aggression and intervention; non-self-governing territories under colonial and foreign occupation were t be given independence should they so wish. For the sovereign States, irrespective of the ways in which they had emerged, the task was to introdu good government and to ensure equality for members of all ethnic, racial or religious groups living inside their borders.

57. In the post-1945 period, characterized by concern for human rights and for the preservation of international peace and security, a compromise has to be found in democratizing society in such a way that all groups are give adequate and effective participation in order to enable them to influence a decisions of government, in particular those decisions which affect them directly, and beyond that to preserve and develop their own identity within the overarching framework of universal human rights enjoyed without discrimination.

2. Requirements for constructive solutions

58. The approach to minority situations must, in order to be constructive, conform to the basic requirements of international law and world order. The guidelines drawn up for the present study, examined at greater length in my first progress report (E/CN.4/1991/43), place the search for peaceful and constructive approaches to minority situations within the wider quest for a world order based on respect for individual human rights and for the principles of international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations.

59. The United Nations was established to maintain international peace and security while promoting a more just world order. The present search for such a world order should be threefold: one, to ensure respect for the territorial integrity of sovereign States while promoting the right to self-determination of the peoples of non-self-governing and occupied territories; two, to promote the human rights of everyone, everywhere in the world; three, to develop international cooperation for the advancement of economic and social progress throughout the world in pursuit of global justice.

60. The Secretary-General of the United Nations stated in An Agenda for Peace (1992, para. 17):

> "The foundation-stone of this work is and must remain the State. Respect for its fundamental sovereignty and integrity are crucial to any common international progress. The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality. It is the task of leaders of States today to understand this and to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world. Commerce, communications and environmental matters transcend administrative borders; but inside those borders is where individuals carry out the first order of their economic, political and social lives."

61. Practically the whole populated area of our planet is now divided among sovereign States. There remain some non-self-governing territories, where the population continues to be subject either to colonial or to alien occupation as defined by United Nations organs. Their right to self-determination, including in most cases their right to establish an independent and sovereign State of their own, is unquestionable. The peoples of those territories, however, fall outside the definition of minorities used in this study and are therefore not addressed here.

62. Those peoples apart, nearly every human being belongs to one State or another in the sense of being a citizen of that State, and the process of reducing statelessness is continuing. The assignment of all human beings to one or another State is an essential feature of the present world order. While persons move between States or migrate to States not originally their own, the normal situation is that human beings "belong" to States, whether as members of major or minor groups in national society. Ideally, all human beings should feel at home in the State where they reside. They should not have to consider themselves or be considered as unwelcome, as second-class citizens.

63. The State can be a repressive agent, but it can also, and often is, an agent for emancipation. This is what is expected from States under international human rights law. Every State has a dual task under international law: to participate at the international level in the adoption of the international law necessary to build the world order described above, including the adoption of international measures to advance compliance with that law; and on the other hand to implement, at the national level, those obligations contained in international law which are intended to ensure good governance and the protection of human rights.

64. Under international human rights law, States have three levels of obligations: one, to respect universally recognized human rights in their dealings with the inhabitants of the country; two, to protect those same human rights against violations by private or non-State entities; three, to assist their inhabitants in enjoying their human rights by the necessary positive measures. These, and other obligations under international law (including those dealing with peace and security) are reflected in the guidelines for the study. While the detailed analysis of the guidelines, contained in the 1991 report, will not be repeated here, a reminder of some of the elements is required.

65. In addressing the responsibility of States and of everyone living within the society, guideline 1 underlines the importance of non-discrimination, fundamental to the whole human rights system. Its relevance to minority issues will be dealt with in considerable detail in chapter II of the present report. Closely related is guideline 4, which stresses the importance not only of measures of non-discrimination but also of positive measures (special assistance or status) to protect human rights. Guideline 6 emphasizes that measures adopted to protect minorities must also ensure respect for the human rights of majorities.

66. Implicit in this also is the obligation of members of minorities to respect the human rights of members of majorities. This is the other side of the principle of non-discrimination. The purpose of minority protection is not and should never be to create privileges or to endanger the enjoyment of human rights, on an equal level, by members of the majority. This is not a purely theoretical issue: members of the national majority sometimes constitute a numerical - and vulnerable - minority within those regions of a country where the national minority group locally is in a majority position. Indeed, ethnic cleansing and other severe violations of human rights are sometimes carried out by members of national minority groups in regions of the country where they are the strongest, as vividly demonstrated in Bosnia-Herzegovina. Discrimination and violations of human rights is equally reprehensible whoever are responsible for it.

67. While States have obligations to respect, protect and fulfil human rights for all their inhabitants, those inhabitants are themselves the source of government power: "The will of the people shall be the basis of the authority of the Government" (Universal Declaration, art. 21.3). The second aspect of guideline 1 is the importance of the full participation of all individuals and groups, as provided for in the two international covenants and in the Universal Declaration. There are two aspects to this. One is that government is to be based on the participation of members of all ethnic or religious

groups, not just by one of them. There has to be democracy, not ethnocracy. The second aspect is that the participation of the different groups must be effective; it is not enough to have formal participation if the minor groups are consistently outvoted by the majority representatives. Balancing between majority decisions and proper attention to the demands of minorities constitutes a core element in the majority/minority relationship.

68. Guideline 2 underlines the necessity to promote the rights and development of minorities in a manner that is consistent with the unity and stability of States, in the light of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. This has legal or moral implications for minorities, majorities and third parties, including other States. The primary emphasis here is the need for all parties to respect the territorial integrity of sovereign States. A major purpose of the Charter of the United Nations was to outlaw the use of force and to prevent intervention directed against the territorial integrity and political independence of States, which is also applicable in situations where there are group conflicts inside a State. The principle of non-intervention in situations of group conflict is essential to international peace, but it must be complemented by a sincere effort, by all States, to build confidence and promote equality among the different ethnic, religious and linguistic groups in the national society.

69. Guideline 3 focuses on the danger posed by ethnic conflict for regional, as well as national, peace and security. The preservation of peace requires abstention, as far as possible, from the use of violent means. The right to physical existence for members of all groups in society is the most important of all. It will not be discussed at great length here, since it is obvious and generally accepted. Acts of extreme brutality approaching genocide do, however, occur even in our time. The aggression in Bosnia comes very close to that. In other cases, it is more complicated: while there is not necessarily an intent to commit genocide, the right to existence is threatened by an escalating conflict where both sides commit indiscriminate acts of violence. Essential in this regard is respect for minimum humanitarian standards applicable under all circumstances. This applies to both or all parties of the conflict, including the Government. Even in cases where the Government is faced with what must be considered terrorist action it is bound, under international law, to respect humanitarian standards, to avoid acts directed against the civilian population, and generally to stay within the limits of what is permitted under emergency law as circumscribed by relevant international human rights law. The international community should be empowered and have the capacity, on a basis of objectivity and impartiality, to prevent mass killings wherever they might occur.

70. Ethnic or religious conflicts can easily lead to regional and international tension, and in some cases to overt intervention, with its profoundly destabilizing effect on international peace. In recent years, there has been a growing emphasis on the notion of "common security", achieved through cooperation among States. The handling of minority conflicts would be substantially helped if a regional attitude of cooperation and common security could be developed.

71. Ethnic conflicts with external involvement destroy the prospects for a policy of common security and place in its stead a policy of confrontation, leading to an arms race and a search for future revenge for present and past defeats. A regional and international climate of stability is essential for expanding cooperation aimed at the creation of conditions worldwide to bring about freedom from want (economic and social rights) and freedom from fear (security policies which are much more cooperative, less confrontational than those of the past). Peaceful and constructive approaches to minority issues are therefore essential also for the realization of economic and social rights for all.

72. Guideline 5 points to the importance of ensuring that the development process removes economic and social obstacles to cooperation and mutual respect among all groups of society. Two aspects are involved here: one, avoiding development processes having differential effects among different groups in society, thus creating or exacerbating social inequality between those groups; two, ensuring that decisions relating to development policies and projects affecting a minority group are implemented in consultation with and are understood by that particular group.

C. What about the right of peoples to self-determination?

73. When a minority group lives compactly together in part of the territory of a sovereign State, its representatives sometimes claim that the group constitutes a people, or nation, and on that basis is entitled to self-determination.

74. "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." This is stated in both Covenants of 1966, and reconfirmed as a general principle in the 1993 Vienna Declaration and Programme of Action, (Section I.2, first paragraph).

75. There is, however, considerable controversy on two essential issues: first, who constitute a "people" and, second, the scope of the right to self-determination, in different circumstances. The World Conference on Human Rights contributed a partial clarification of this issue:

> "Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination. The World Conference on Human Rights considers the denial of self-determination as a violation of human rights and underlines the importance of the effective realization of this right." (Vienna Declaration and Programme of Action, section I.2, second paragraph).

76. This study does not deal with the situation of peoples living in colonial territories or peoples living under alien, illegal occupation which has been established after the adoption of the Charter of the United Nations and in violation of the principles of the Charter. These peoples have an obvious right to self-determination, including independence if that is what they

decide. When the word "people" is used in this context, it means the permanent, resident population of the territory concerned, not the separate ethnic or religious groups, whether dominant or not in that territory. It refers to "demos", not to "ethnos". During the process of decolonization, the word "people" was consistently understood as the population as a whole.

77. This study deals only with groups living in sovereign States, and within the territory recognized by the majority of the international community as belonging to that sovereign State, not as a colonial dependency or occupied territory but part of its sovereign area. In regard to such groups, the next paragraph of section I.2 of the Vienna Declaration and Programme of Action applies:

> "In accordance with the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, this shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind."

78. The reassertion of the relationship between the right to self-determination found in the Covenants adopted in 1966 and the principle of self-determination as found in the Declaration of 1970 is very much to be welcomed. It was already expressed in the Declaration on the Granting of Independence to Colonial Countries and Peoples:

> "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations." (General Assembly resolution 1514 (XV), para. 6).

79. The controversy over the understanding of "people" as beneficiaries of the "right to self-determination" had, prior to the 1993 Vienna Declaration and Programme of Action, become heightened. It had been further complicated by the increasingly numerous understandings sought to be given to the content of self-determination. Some of the most vehement parties to the present violence in Bosnia and elsewhere, seek to justify it by exaggerated and misconceived interpretations of the right to self-determination. Bosnia-Herzegovina was and should still be seen as a sovereign State whose territorial integrity and political unity should be respected; the acts of aggression in encouragement of group claims for self-determination have demonstrated the dangers inherent in vague and elusive interpretations of the right to self-determination.

80. In interpreting the quoted text from the Vienna Declaration in relation to groups living within the territory of sovereign States, the following observations can be made.

81. The sovereign State should "possess a Government representing the whole people belonging to the territory without distinction of any kind".

82. The word "people" obviously means the whole people, the "demos", not the separate "ethnoses" or religious groups.

83. If members of a group living either compactly together in an administrative unit of the State or dispersed within the territory of a sovereign State claim that the State is not possessed of a Government representing the whole people without distinction, this claim can be examined at the international level, either by the Committee on the Elimination of Racial Discrimination (CERD) in connection with its examination of the State's report, since discrimination in political rights on ethnic grounds is covered by the Convention on the Elimination of Racial Discrimination, article 5, or by the Human Rights Committee. If the State is a member of the Council of Europe, it could also be addressed under article 14 of the European Convention on Human Rights in conjunction with Protocol 1. In such cases, the remedy will have to be that the discrimination is brought to an end and that the Government is made truly representative, by allowing for participation in the political process on a basis of equality of all members of the group.

84. Only if the representatives of the group concerned can prove, beyond reasonable doubt, that there is no prospect within the foreseeable future that the Government will become representative of the whole people, can it be entitled to demand and to receive support for a quest for independence. If it can be shown that the majority is pursuing a policy of genocide against the group, this must be seen as very strong support for the claim of independence. The mere fact of there being ethnic violence between the majority and minority does not prove that there is an intent to destroy the group as such, in whole or in part. Even if there was, it would still have to be shown that the majority side was more responsible than the minority for the acts of violence taking place. Unfortunately, when violence has reached such levels, there is at present no machinery at the international level to which the aggrieved party can turn for an impartial finding.

85. Special problems arise when a part of the settled residents of the country having an ethnic, linguistic or religious identity different from that of the majority is denied citizenship. This effectively blocks that group from participating in the political processes and could be a strong indicator that the Government is not representative of the whole people. In this situation also however, the primary effort should be to ensure that they obtain citizenship, rather than secession.

86. New States can of course still emerge through the peaceful and consensual subdivision of existing sovereign States. Borders can also be changed by agreement between the parties, obtained without duress. There is, however, no unilateral right under international law for groups to obtain such subdivision or border changes except under the conditions mentioned above. Changes arising from peaceful negotiations, free of acts of aggression or external intervention, are obviously in conformity with international law.

87. "The United Nations has not closed its door. Yet if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve ... . The sovereignty, territorial integrity and independence of States within the established international

system, and the principle of self-determination for peoples, both of great value and importance, must not be permitted to work against each other in the period ahead. Respect for democratic principles at all levels of social existence is crucial: in communities, within States and within the community of States. Our constant duty should be to maintain the integrity of each while finding a balanced design for all." (Boutros Boutros-Ghali, An Agenda for Peace, paras. 17 and 19).

88. It is possible that groups living within sovereign States do have a right to self-determination short of secession. This depends on the acceptability of the concept of "internal self-determination". It follows very clearly from the quoted provision in the Declaration on Friendly Relations that there must be a government which is representative of the whole people; this means that the people as a whole has a right to elect its government. Democracy is thus clearly a part of the right to self-determination. What is less clear is whether groups have a right to some local self-government, or autonomy within the State, on the basis of the right to self-determination. As will later be shown, some form of territorial subdivision may in some cases be a practical way to ensure the existence and identity of an ethnic group, provided it is given a democratic, not ethnocratic, content. Whether there exists a general right is much more doubtful. There may be some acquired rights, such as pre-existing autonomy within union republics of dissolved federal States, that should not lightly be done away with. Such a consideration might be based not on the right to self-determination, but on the instruments relating to minority rights or the rights of indigenous peoples, including the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, or on the future Universal Declaration on the Rights of Indigenous Peoples.

D. What guidance can be found in international human rights law?

1. Foundations: the common domain

89. International human rights law is concerned, above all, with the equality and dignity of every human being. It therefore sets limits to the collective rights of both majorities and minorities, none of which can be used to overrule the freedom and equal dignity of the human being. What is generally overlooked is that this also excludes the right to establish privileges by and for the members of the majority. Minority rights are intended to emphasize what should otherwise follow from general human rights, that there should exist equality in fact. If the majority wants to promote its identity and culture through the State, the minority should likewise be allowed to promote its identity and culture with the support of the State.

90. Under international human rights instruments, a sovereign State is required to ensure the common welfare of all its inhabitants. Under the Covenant on Civil and Political Rights, article 2, each State party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, religion or language, through the legislative and other measures necessary to give effect to those the rights. Under article 2 of the Covenant on Economic, Social and Cultural Rights, each State party undertakes to take steps, to the maximum of

its available resources, with a view to progressively achieving the full realization of the rights recognized in the Covenant. Of particular significance for this study, the States parties undertake to guarantee that the rights contained in the Covenant will be exercised without discrimination of any kind as to, for example, race, colour, language or religion. Under the Convention on the Rights of the Child (arts. 2 and 4), State parties shall respect and ensure the rights set forth in the Convention and for that purpose undertake all appropriate legislative, administrative and other measures required.

91. Similar obligations can be found in other human rights instruments. Taken together, they constitute a comprehensive set of tasks to be fulfilled by the governments of sovereign States. The government is obliged not only to respect, but to protect and fulfil the rights of everyone within the national society, without discrimination. The government cannot escape from these obligations by transferring authority to larger or smaller groups in society, by territorial or personal arrangements for autonomy, unless sufficient authority is preserved for the national government to ensure that all human rights are implemented on a basis of equality throughout the territory of the State.

92. Apart from these provisions requiring that the State organize and maintain a legal order capable of ensuring human rights for all individuals in the national society, issues specifically relating to the rights of minorities and their members can be grouped in three categories: (a) equality and non-discrimination; (b) the right to existence; (c) the right to identity.

93. Elimination of discrimination is a way of extending genuine citizenship. It includes not only formal freedom and equality, but also empowerment of those who in the past have been the subject of discrimination, without forcing them to conform to the dominant culture, that is to say, to give up their identity.

94. Provisions on equality and non-discrimination are found in all major human rights instruments, universal and regional: Universal Declaration of Human Rights, article 2; International Covenant on Civil and Political Rights, articles 2 and 26; International Covenant on Economic and Social Rights, article 2; European Convention on Human Rights, article 14; American Convention on Human Rights, article 1; African Charter on Human and Peoples Rights, article 2.

2. Elimination of ethnic discrimination

95. One of the main objectives of the International Convention on the Elimination of All Forms of Racial Discrimination is to promote racial and ethnic equality. The aim is not only to achieve de jure equality, but also de facto equality, allowing the various ethnic, racial and national groups to enjoy the same social development. The goal of de facto equality is considered to be central to the Convention.

96. Whereas article 2.1 expresses the general obligation of States parties to refrain from and to end acts of racial discrimination and to pursue policies aimed at bringing racial discrimination to an end and improving inter-racial

relationships, of article 2.2 provides for the adoption of special and concrete measures to further the goal of racial equality among various parts of the population. This is based on the reality that nearly all States parties have national or ethnic, religious and linguistic minorities, such as indigenous populations, tribes, nomads, migrant workers or refugees. Consequently, attention must be paid to the socio-economic and political situation of these groups in order to ensure that their development in the social, economic and cultural spheres takes place on an equal footing with that of the general population.

97. The Chairman of the Committee on the Elimination of Racial Discrimination has stated that

> "in accordance with the Convention, the primary obligation of every State party is to adopt, and to put into effect without delay, a comprehensive national policy for the elimination of racial discrimination in all its forms, utilizing for that purpose all appropriate means. The Convention also provides clear guidelines, with which States parties undertake to comply in the development and application of their respective national policies. Those policies must have as their aim the elimination of racial discrimination in all its forms - whether practised by public authorities, institutions or officials or by private individuals, groups or organizations. Moreover, they must aim not only at combating racial discrimination but also at promoting inter-racial understanding, tolerance and friendship. Toward these ends, States must be prepared to use both coercion and persuasion - utilizing the power of the law, to prohibit and punish, as well as the power of education and information, to enlighten and persuade". (Letter from the Chairman in response to a request for information from the Secretary-General in pursuance of Commission resolution 1993/24, para. 7).

98. It has again to be stressed that whenever the notion of "racial" discrimination is used, it also includes "ethnic" discrimination. Similarly, the promotion of inter-racial understanding, tolerance and friendship includes inter-ethnic understanding, tolerance and friendship.

99. In accordance with article 4 (a), State parties assume the obligation of declaring

> "an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin".

Under article 4 (b), States parties shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law.

100. Article 4 has been considered by the Committee to be of paramount importance for the implementation of the Convention as a whole. The States parties must take legislative action to comply with their obligation under this article, irrespective of the actual existence of the prohibited activities or organizations.

101. Article 1 of the new Declaration on minorities provides that States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity.

102. In its article 1.4, the International Convention on the Elimination of All Forms of Racial Discrimination states:

> "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."

3. Texts dealing specifically with minorities

103. The International Covenant on Civil and Political Rights provides in article 27 that

> "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

104. The most important text for the purposes of the present study is the Declaration on the Rights of Persons Belonging to National and Ethnic, Religious or Linguistic Minorities, which calls on States to protect the existence and identity of minorities and to encourage conditions for the enjoyment of that identity (art. 1).

105. Religious minorities also benefit from the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

106. Minorities falling under the category of indigenous groups are protected under the provisions of International Labour Organisation (ILO) Conventions No. 107 of 1957 and No. 169 of 1989. Children of minorities or indigenous peoples are the subject of article 30 of the 1989 Convention on the Rights of the Child, which states:

"In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

107. Article 31 of the International Convention on the Protection of the Rights of All Workers and Members of Their Families provides some protection:

"1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining links with their State of origin.

"2. States Parties may take appropriate measures to assist and encourage efforts in this respect."

108. Article 5.1 (c) of the UNESCO Convention against Discrimination in Education, adopted in 1960, has the following wording:

"It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

(i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;

(ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and

(iii) That attendance at such schools is optional."

109. The concluding document of the Copenhagen Meeting of the Conference on Security and Cooperation in Europe, (CSCE), dated 29 June 1990, has elaborated provisions, many of which have inspired the United Nations Declaration on Minorities. Elements of the Copenhagen concluding document are given below:

"(31) ... Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right:

"(32.1) to use freely their mother tongue in private as well as in public;

"(32.2) to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

"(32.3) to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue;

"(33.4) to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs;

"(32.5) to disseminate, have access to and exchange information in their mother tongue;

"(32.6) to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations.

Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belong to a national minority on account of the exercise or non-exercise of any such rights.

"(33) The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State. Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.

"(34) The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation. In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.

"(35) The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities."

110. Minority rights have recently become a major aspect of bilateral treaties between countries in Central and Eastern Europe. To a large extent, the language chosen for the treaties derives from the CSCE texts, particularly the Copenhagen document.

111. The Council of Europe has already adopted its Charter on Regional and Local Languages. Efforts are now under way to draft and to adopt an optional protocol or convention, based on a number of pre-existing drafts: a draft convention prepared by the European Commission on Democracy through Law; a draft protocol adopted by the Parliamentary Assembly of the Council of Europe on 1 February 1993 (recommendation 1201/1993); and several other drafts, one of them prepared by the Federal Union of European Nationalities. The Council of Europe draft is being elaborated by a working group; it is expected that it will be completed and the text adopted by September/October 1993.

112. As stated in the first report of this study (E/CN.4/Sub.2/1990/46, paras. 27-28), mention should also be made of the treaties adopted under the auspices of the League of Nations and the immediate post-1945 peace treaties, in so far as these are still relevant. The relevance of treaties and understandings from the time of the League of Nations may in some respects have continued validity. While not universal in coverage they were universal in character. All bilateral treaties have to be interpreted, however, in the light of modern international human rights law. Minorities covered by bilateral treaties must, like all other minorities, enjoy international standards of minority rights; minorities not covered by the treaties must also enjoy contemporary international standards of minority rights.

4. Existence of and membership in a minority

113. The Permanent Court of International Justice in its Advisory Opinion of 31 July 1930 on the Greco-Bulgarian Communities case (P.C.I.J., Ser.B., No. 17,22) stated that the existence of communities was a question of fact, it was not a question of law. From the point of view of international law, the question whether a State recognizes or does not recognize minorities in its internal law is not decisive. This also follows from the obligation of all States to carry out in good faith their obligations arising from treaties and other sources of international law; they cannot invoke provisions in their Constitution or laws as an excuse for failure to perform this duty (art. 13 of the draft declaration on the rights and duties of States of 1949).

114. Membership of a group may represent a balance between self-identification and acceptance by the group. Recognition of membership by the State may facilitate the application of measures for the benefit of groups, but cannot be the determining factor in the implementation of the Declaration. Individuals cannot be compelled to embrace membership of a minority by groups or States, because the Declaration and general human rights standards do not permit such exercises in cultural determinism. Group rights may not diminish individual rights. The CSCE Copenhagen Meeting on the Human Dimension stated it in the following words:

> "To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice." (Concluding document, para. (32)).

E. The framework for peaceful and constructive solutions

115. Drawing on the observations made in the preceding sections, it should now be possible to outline the main framework for peaceful and constructive solutions to situations involving minorities.

1. States as building-blocks of international order

116. While territorial integrity is essential to peace and order, sovereignty is today, as a consequence of human rights, understood in a much more open way than before. Freedom of movement allows members of minorities to have easy access to members of the same ethnic or linguistic group who are citizens of neighbouring countries. States are expected to cooperate in solving problems of an economic and social nature, including bilateral and regional cooperation to facilitate practical aspects of the existence of ethnic groups straddling borders of different States. Contemporary sovereignty carries obligations of good government, in particular compliance with universal human rights. Part of this obligation is to ensure that no member of any group within the national territory should have reason to be considered a second-class resident in that society.

117. Every State thus has a dual task under international law: to participate at the international level in the adoption of the international law necessary to build the world order as described above, including the adoption of international measures to promote compliance with that law; and to implement, at the national level, those obligations contained in international law which are intended to ensure good governance and the protection of human rights.

118. Under international human rights law, States have three levels of obligations: first, to respect universally recognized human rights in its dealing with the inhabitants of the country; second, to protect those same human rights against violations by private or non-state entities; third, to assist their inhabitants in enjoying their human rights by the necessary positive measures.

2. Elimination of discrimination: a process of emancipation

119. The realization of human rights for all, including the elimination of all forms of discrimination, represents a process of emancipation for all human beings which is still only slowly and imperfectly being achieved. Of particular importance for the present study is the elimination of discrimination based on race, colour, national or ethnic origin.

120. In the past, discrimination consisted in the denial of genuine citizenship; groups that were discriminated against were effectively blocked from participation. The worst treated were slaves and their descendants; even after the end of slavery (the first step in emancipation) it took a long time before the Afro-American population in the United States obtained genuine rights of participation. The civil rights movement, which scored its greatest successes in the 1960s, pursued the task of achieving the second stage of emancipation: genuine emancipation and equal enjoyment of rights. In terms of equality, in fact, the task is not yet fully completed.

121. Until the last century Romans were, in some parts of Europe, treated practically as slaves. Their emancipation has only been partial and incomplete; they were often forced to opt for ways to survive which were frowned at by the dominant groups in society, and they still in many places suffer the stigmas and discrimination which arose out of their previous inferior status.

122. For centuries, Jews were severely restricted in their participation in many European States; segregation in ghettos was forced upon them. The only way they could become "emancipated" was through baptism, that is to say, conversion to the dominant religion (Christianity). During the period of the Enlightenment, they were gradually accepted, but in some places on the condition that they gave up their Jewish name and other aspects of their Jewish identity - a policy of assimilation; the subsequent emancipation has not prevented serious, recurrent outbursts of anti-semitism.

123. The process of decolonization was a process of emancipation of populations in colonial territories, opening up the possibility for them to freely determine their political status and their economic, social and cultural development. The process is continuing, however, both in terms of extending their genuine participation through democratic structures and through the elimination of inequalities that may exist for some of the ethnic, religious or linguistic groups in the newly independent States.

3. The framework: combination of elements

124. The framework for the solution of minority situation problems consists in a combination of several elements:

(a) Respect for territorial integrity;

(b) Ensuring equality and non-discrimination in the common domain;

(c) Arrangements for pluralism in togetherness;

(d) Where appropriate, pluralism by territorial subdivision.

125. Respect for territorial integrity is an issue of international peace and security and will not be discussed further here. The three other elements will be examined below in the light of current practices.

126. The obstacles in real life to finding solutions to such problems are formidable, and will be examined below. They can, partly or wholly, be overcome through the use of national mechanisms for recourse and conflict resolution, to which chapter III, Section D of the study is devoted.

II. PRACTICE

127. The following sections provide illustrations from real-life practice in different parts of the world, based on the framework outlined in chapter I, section E, above.

128. They are intended to illustrate efforts made by States to implement arrangements conducive to the realization of human rights in ways which respect the territorial integrity of sovereign States and promote the stability of the national society.

129. Examples are taken from various sources, including responses to the questionnaire submitted in the process of making this study and States' reports. For lack of time and space this part has been less developed than initially intended. It is desirable that further and systematic efforts are made to review and to evaluate much more thoroughly the experience obtained through practice.

130. The impression derived from reviewing responses and State reports is that in most countries groups live together, not necessarily in full harmony, but for most of the time peacefully and showing each other mutual respect. Many States have done much during recent years to improve relations between groups; more often than not this has resulted in positive change.

A. Equality and non-discrimination in the common domain

1. The requirement of equality and a common domain

131. It has been pointed out (see para. 90, above) that the primary role of a sovereign State is to advance the common welfare of all its inhabitants, on a basis of equality and non-discrimination. By ratifying the human rights conventions, State Parties expressly undertake to "respect and ensure" the human rights contained in those texts. Under the International Convention on Elimination of All Forms of Racial Discrimination (ICERD), States undertake to eliminate racial discrimination and promote understanding among all races. "Racial discrimination" also includes ethnic discrimination (ICERD, article 1) and whenever "race" is used, it also includes "ethnic group".

132. This obligation to ensure equality implies that every State must ensure the existence of a common domain, which is not directed and controlled by the demands of one ethnic group or one religion alone. In the common domain, every resident must be equally free to participate and to enjoy her or his human rights, without being treated in any way as a second-class resident or citizen on account of ethnic, religious or linguistic background.

133. Under ICERD, States have undertaken to prohibit practices of racial and ethnic segregation, to prohibit and punish acts of violence or incitement to such acts against any race or group of another colour or ethnic origin, to prohibit organisations which incite to racial (and ethnic) discrimination and participation in such organizations.

134. Under ICERD, article 5, States undertake to guarantee the rights of everyone without discrimination in a very wide area: the right to equal treatment before the tribunals; the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institutions; political rights; civil rights as listed in article 5 (d); economic and social rights as listed in article 5 (e); and the right of access to any place or service intended for use by the general public.

135. Since ICERD also covers ethnic discrimination, it is the primary instrument for the promotion of equality between members of different ethnic groups.

2. Domestic legislation on non-discrimination and equality

136. Most States have adopted legislation covering many or all of the provisions of ICERD. Effective implementation at the national level of all its provisions would constitute a first line of defence against ethnic violence. A large majority of States recognize their responsibility for ensuring equality and non-discrimination within their territory. This is reflected in the substantial number of ratifications (March 1993: 134). The International Convention on the Elimination of Racial Discrimination has one of the highest number of ratifications of all human rights instruments. More importantly, it can be observed in the particular attention paid to equality and non-discrimination in many different fields of national law. The following information is derived from the Global Compilation of National Legislation Against Racial Discrimination (HR/Pub/90/8). It must be taken into account that "racial discrimination" also includes ethnic discrimination, and this information is, therefore, directly relevant to the present study.

137. It is recognized by the overwhelming majority of States that individuals are entitled to equality of treatment before the law, and most States have passed legislation to this effect. Even where it has been officially recognized that individuals are to be treated equally by the law, it has been acknowledged that there may be practical problems in the achievement of this policy. The Constitution of Austria, for example, takes this into account by stating that nationals belonging to a minority should receive the same treatment "in law and in fact".

138. Many States have recognized the need to ensure that civil rights are enjoyed by all without discrimination. For example, some States seek to ensure that all persons are free to marry as they choose. Bulgaria even has a provision stating explicitly that any person who takes measures to prevent mixed marriages will be punished.

139. The right for everyone to own and to transfer property is recognized in a number of constitutions and domestic legislations. Those of Portugal and El Salvador are mentioned as examples. In Mauritius all, regardless of race, have the right to the protection of their property and not to be deprived thereof unless they are properly compensated.

140. The most important question is the right to security of person. This should be guaranteed by States to all persons, citizens and non-citizens alike, irrespective of ethnic, linguistic and religious background. A number of countries have adopted legislation on this subject.

141. Equality and non-discrimination in the exercise of political rights is also provided for in the legislation of many countries, which thereby bar the possibility of ethnic or racial discrimination. In some countries this is explicitly stated, but in other cases it is implicit in the general principle of equal and universal suffrage. In many countries, freedom of association and the right to assembly are provided for, without distinction as to race, which again includes distinction on the grounds of ethnicity. In the United Kingdom, associations may not discriminate in admitting applicants or in the terms on which they will admit them. It is also provided that associations may not discriminate in granting to members access to any benefits of the association, nor may any member be arbitrarily deprived of his membership or made subject to any other detriment simply on the grounds of race.

142. In many countries, freedom from discrimination in employment is specifically guaranteed. In Australia, France, New Zealand and the United Kingdom and other States, one may not refuse to employ or dismiss a person on the grounds of race. In the United Kingdom, it is stipulated that professional bodies and training courses that confer qualifications may not withhold them on the grounds of race. The laws of Australia, Canada, Finland, New Zealand and the United Kingdom prohibit discrimination in the conditions of work of employees.

143. Discrimination in access to housing is prohibited in a number of countries. In Australia, Canada, New Zealand and the United Kingdom it is prohibited for individuals to be denied access to property or to be discriminated against regarding the terms on which property is offered simply on the grounds of race. These countries also prohibit the ill-treatment of occupants, such as by depriving them of benefits or arbitrarily evicting them on the grounds of race.

144. Under the legislation of a great number of countries, discrimination in education is explicitly prohibited, in line with the UNESCO Convention against Discrimination in Education.

145. Education is also an area where the struggle against racial or ethnic discrimination can be carried out. Some countries have incorporated legislation to the effect that education shall be used to eradicate all socio-economic prejudices. Colombia stipulates in its legislation that education should help to forge greater links between the various groups in society. In Mexico, education is also used to develop a sense of brotherhood among all citizens.

146. Many States have recognized the right of access to public services or facilities. In countries such as Australia, Brazil, Canada, Denmark, New Zealand, Norway and the United Kingdom legislation generally prohibits any person from barring another access to, or forcing another to cease enjoying, any services, facilities or places generally open to the public solely on the grounds of race.

147. Some States prohibit associations that promote racial discrimination. In Spain, associations formed for the promotion of racial discrimination are viewed as illegal. Portugal prohibits Fascist organizations. Panama does not permit associations based on the ideology of the superiority of any race. In France, these types of associations can be dissolved and become null and void.

148. While an increasing number of States emphasize in their legislation the right of everyone to freedom of expression, steps are also taken to prohibit the use of freedom of expression to promote racism, xenophobia and racial and ethnic hatred. There are dilemmas involved; while the prevention of speech that incites hatred is essential, the prohibition can sometimes selectively be used as an instrument to block the right of minorities to articulate the discrimination to which they are subjected, without comparable enforcement directed against violations by members of the majority Group. The problem of bias among law enforcement agencies constitute a serious obstacle.

149. Of special importance, in the light of contemporary ethnic conflicts, are provisions prohibiting incitement to racial or ethnic hatred or xenophobia. Many States have adopted such legislation, as evidenced in their reports to the Committee on the Elimination of Racial Discrimination. For instance, countries in Central and Eastern Europe had such legislation on their books; the same criminal legislation is to a large extent being maintained in these States, including successor States of the Soviet Union and Yugoslavia, until revised by new criminal codes. Numerous examples are given by States in their report to the Committee. Under relatively normal conditions, such legislation has undoubtedly played a significant role in preventing ethnic hatred.

150. The effectiveness of such legislation depends on several factors: that it is generally adhered to by the public; that it is applied consistently and impartially by the courts; and that it is enforced without any bias by the police and security forces. During the tumultuous transition processes now taking place, it has turned out not to be very effective.

151. The first line to crumble is often the local police. It is frequently reported that local police are affected by stereotypes and prejudice and therefore do not manage to behave impartially or to protect vulnerable groups against onslaughts.

152. When conflicts become more severe, the local police are sometimes pushed aside by militants who take the law into their own hands. When security forces seek to repress an ethnic challenge, they often overreact and resort to indiscriminate action affecting civilians and non-combatants, leading to

strengthened resistance and more indiscriminate action on the other side. From then on, a process of violations and counter-violations leads to escalation in which the legal machinery becomes increasingly powerless, at the worst ending in a period of near-anarchy or protracted conflict, with intransigence on both sides.

153. It is therefore of primary importance, for States who want to ensure peaceful and constructive solutions to situations involving minorities, to prepare the police and the security forces for their difficult task of impartial and effective response to any form of ethnic discrimination, from whatever source it originates. In some cases, members of the minority group are attacked by death squads or subjected to assassination and the police or security forces fail to search and to prosecute those who have committed the act. The feeling among members of the minority of a lack of equal protection by the law of their personal security is a major factor in the hardening of attitudes.

154. Manifestations of ethnic and racial prejudice are still also widespread where law enforcement officials seek to act against it. Anti-semitism, violent actions against migrant workers including murder and arson, serious discrimination against the Romas (Gypsies) in many parts of Europe and discriminatory acts against the Afro-American population in North America indicate that significant groups within the general public are still affected by racism.

155. Fortunately, a wide range of measures have been taken in many countries to counteract the spread of racial and ethnic violence. Apart from legislation, influenced by CERD and by the work of the CERD Committee, States have established institutions such as commissions on racial equality, human rights commissions and the institution of Ombudsman, in one case (Sweden) a separate Ethnic Discrimination Ombudsman, minority councils and numerous other mechanisms.

3. Inequality in standards of living

156. In the questionnaire used for this study, States were asked to provide information on the standard of living of minorities compared to the average in their countries. A rather clear picture emerged from the replies: two categories of minorities were consistently below the national average, in some places far below. These were the indigenous peoples and the Romas (Gypsies).

157. Quotations below are taken from government replies included in the 1991 and 1992 progress reports and the present report.

158. Australia responded that the Aboriginal and the Torres Strait Island people were clearly the most disadvantaged Australians.

> "On every available measure of social and economic disadvantage Aboriginal and Torres Strait Island people record worse outcomes, face greater problems and enjoy fewer opportunities than the rest of the

Australian population. The poverty and relative powerlessness of Australia's indigenous peoples is reflected in inferior education, employment, income and housing."

The Australian reply sets out in considerable detail the indicators with regard to employment, education and health.

159. Belize reported that the Mayan Indians had a living standard much lower than that of the rest of the population. Bolivia underlined that, because of the character of their subsistence economy, the standard of living of its ethnic groups was below the national average. Colombia stated that there were no statistics available on the standard of living of the ethnic indigenous groups, and that it was therefore not possible to provide documentary evidence in that respect. Ecuador recognized that the situation of the indigenous peoples might be very serious, without giving precise information on differences in living standards.

160. Mexico provided the information that 96.5 per cent of the indigenous population live in localities rated as highly marginal. Generally speaking, in Mexico the rural municipalities with a high population of indigenous population are classified as highly or very highly marginal. And almost all of the 30 per cent of the indigenous population who are resident in municipalities classified as urban live in conditions of poverty and deprivation. Illiteracy, infant mortality, malnutrition and the associated mortality and low life-expectancy are disproportionately high in indigenous communities, and some indicators are twice the average level.

161. In Norway there are, according to the government reply, no recent statistics which indicate general, significant differences between minorities and other groups. There are, however, certain indications that recent immigrants from developing countries tend to have a somewhat lower standard of living than the average Norwegian. Existing data also show that the standard of living in some of the areas with a considerable concentration of Sami people is somewhat lower than the average.

162. The reply from the Government of the Philippines indicates that most ethnic cultural communities have very low standards of living, which make them vulnerable to disease and other social problems. The high incidence of poverty in the country, which afflicts 48.5 per cent of the population, affects the rural communities as well. These poverty-stricken groups are generally perceived to be characterized by low life expectancy, high malnutrition, and high morbidity and mortality rates. However, specific statistical data on the socio-economic and demographic characteristics of the minority groups are not available. It is stated, however, in the reply of the Philippines that the standard of living of ethnic minorities may be generally lower than that of the national average, but this is not so because they are minorities, but rather because of the geographic locations and terrain of the areas where these minorities reside. In the hinterland, facilities and services such as health, infrastructure, education etc. are less available than in the lowlands. Where ethnic groups reside in the lowlands and centres

of population and development they have, as a rule, the same level of economic conditions and standards of living as the average Filipino. It is also pointed out that the Chinese, who live and practise their occupations and businesses in the urban centres, in general enjoy better living standards than the average Filipino.

163. Venezuela also reports that the living standards of the indigenous groups are lower than those of the rest of the population. The other group reported to have a significantly lower standard of living than the average are the Romas (Gypsies). Croatia reports that the Romas are typically lagging behind in terms of welfare, social development and means of earning a living. Besides, they are poorly organized, have a high degree of illiteracy and semi-literacy, and a high rate of child mortality. There is also a noticeable discrepancy in the area of employment: only 20 per cent of the Romas hold regular jobs in Croatia.

164. Hungary reports that the social situation of the Romas is lower than the average in terms of schooling, employment and living standards, and that child mortality rates are higher and health conditions worse. Most Gypsies live in less developed areas of Hungary, where the living standards of the Hungarian population are likewise lower than the national average, but higher than the average for the Gypsies.

165. Slovenia reports that members of the Gypsy (Romani) ethnic communities live in difficult social conditions with a low employment rate, very often below normal housing standards, owing to their way of life, traditions and difficulties in adapting to the urban way of life. Therefore, a large part of the Gypsy ethnic communities represent a great social problem, which the Republic of Slovenia is trying to solve by programmes aimed at improving their housing conditions, programmes of active employment, the provision of social welfare to those who cannot earn their own living and, especially, through systematic attention to the education of children, since lack of education makes it impossible to achieve any improvement in the social field.

166. Spain reports that the Gypsy population has birth rates, above the worldwide mean, and high infant mortality rates. They are more prone to disease, owing mainly to lack of basic knowledge concerning preventive measures, nutrition etc., and to the unhealthy conditions in which they sometimes live. In Andalusia, where a substantial part of the Romani population lives, there is generally a pattern of regular and constructive coexistence between the Romanis and the rest of the population, but there are some provinces in Andalusia with a high frequency of conflict owing to the fact that those provinces have the lowest levels of per capita income and cultural development, which renders still more difficult the work of consciousness-raising to promote better understanding between Gypsies and non-Gypsies and is not conducive to participation by the Gypsy population in the general life of society. These provinces represent an exception to the general state of affairs in Andalusia.

167. In the reply of the United Kingdom it is pointed out that available statistics do not lend themselves to answering the question, but some statistics can give indirect information, particularly the unemployment rate and the child mortality rate. Persons of Pakistani/Bangladeshi origin have the highest level of unemployment, with the West Indians in second place. Persons coming from India have a level of unemployment not much different from that of the whites. Infant death rates are the highest for infants of mothers whose country of birth is in the African Commonwealth and nearly as high for infants of mothers from Pakistan. On the other hand, the infant death rate for infants of mothers from the Caribbean Commonwealth and mothers born in India were only slightly higher than the average for mothers born in the United Kingdom. It should be noted that the statistics from the United Kingdom are related to the country of origin, but not ethnicity as such, for which they are not available.

4. Affirmative action and dilemmas confronted

168. The purpose of affirmative action is to advance equality in the enjoyment of human rights within societies where in the past there has been systemic discrimination, whether social or political.

169. The sociopolitical context should be explored because different societies, with very different social, ethnic and political conditions, can justifiably place their emphasis on different approaches. The main concern should be to reach the goal, which is equality in the enjoyment of human rights; how it is to be done depends on pre-existing conditions of inequality and other factors that have to be taken into account.

170. The concept of affirmative action is nowhere authoritatively defined. One author 1/ claims that it was first used in the United States debate on civil rights in the early 1960s, more precisely in President Kennedy's Executive Order No. 10925, to describe public policies aimed at overcoming present effects of past discrimination. As previously noted, it consists in preferences given to members of a group, typically defined by race or sex, and is held to be justified precisely because members of that group have in the past been discriminated against, not because of their individual characteristics but because they belonged to the group concerned. 2/

171. A provisional working definition of affirmative action, based on CERD, article 1, paragraph 4, could run as follows.

172. Affirmative action is preference, by way of special measures, for certain groups or members of such groups (typically defined by race, ethnic identity or sex) for the purpose of securing adequate advancement of such groups or their individual members in order to ensure equal enjoyment of human rights and fundamental freedoms.

173. A closer look at the different elements of the definition is required. To start with, affirmative action is preference to be given according to race, ethnic group or sex. As such it appears to be directly in conflict with the definition of racial discrimination in ICERD, article 1, paragraph 1. Affirmative action is therefore also sometimes (and in a derogatory way) referred to as "reverse discrimination".

174. This brings us to the second element of the definition. It can be used only for the purpose of securing adequate advancement of such groups or their individual members in order to ensure equal enjoyment of human rights and fundamental freedoms. It is typically justified in situations where there has in the past been systematic discrimination, in order to reach the goal now required by contemporary international law: equal enjoyment of human rights and fundamental freedoms.

175. It follows, therefore, that such measures cannot be continued after the purpose has been achieved: when equal enjoyment, across racial, ethnic or sex lines, of human rights has been achieved, continued preference for members of the group previously discriminated against would constitute unjustified discrimination since it would from then on lead to unequal enjoyment of human rights.

176. This is also stated in ICERD, article 1, paragraph 4 in fine:

> "provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved".

177. Affirmative action is therefore intended to create equality, but is different from both non-discrimination and targeted support to individuals based on their individual need to obtain equality of opportunity.

178. There are "soft" and "strong" versions of affirmative action. The "soft" versions are extensions of the principle of non-discrimination: latent social discrimination creates obstacles to members of groups affected by such discrimination. In evaluating their qualifications, some preference shall be given in order to compensate for such latent discriminatory attitudes.

179. Stronger versions of affirmative action are aimed at an accelerated creation of a balanced society - a society, that is, where there is equality in participation at all levels, in political life, in the professions, in the economy and in other fields. Typical of such versions is the establishment of quotas for access to education at higher levels, to the civil service, to the professions and in employment. Such approaches to affirmative action suspend or modify traditional criteria of merit as a basis for access, but can be justified when there were, in the past, discriminatory practices which deprived members of those groups of equal opportunity and blocked for them the application of criteria of merit.

180. The African National Congress of South Africa has produced a draft bill of rights, revised in February 1993, from which the following information is taken.

181. The primary emphasis in the Bill is on equality: no one shall receive privileges or be subjected to discrimination, domination or abuse on the grounds of race, colour, language, gender, or creed, political or other opinion, birth or other status (art. 1, para. 2). This emphasis is readily understandable in the light of past experience.

182. Taking into account the profound structural inequality created during decades of apartheid rule, strong emphasis is placed on affirmative action. Article 14 puts it in the negative: that nothing in the Constitution shall prevent the enactment of legislation or the adoption by any private or public body of special measures of a positive kind designed to procure the advancement and the opening up of opportunities, including access to education, skills, employment and land, and general advancement in the social, economic and cultural spheres, of men and women who in the past have been disadvantaged by discrimination. "The measures shall not be deemed to contradict the principle of equal rights for all South Africans as set out in article 1." (Art. 14 (2))

183. Article 15 contains the positive measures that have to be taken by the State to achieve the goals set in article 14, and to overcome the imbalances created by discriminatory laws and practices, to create a non-racial society in South Africa. The measures include implementation of programmes aimed at speedily achieving the balanced structuring in non-racial form of the public service, defence and police forces and the prisons in accordance with the principles of representativity, competence, impartiality and accountability.

184. Since, however, affirmative action is based on belonging to a definable group and gives preference to members of that group over members of other groups, it can lead to group conflict. This is why it should not be continued beyond the time when the purpose, equality, has been achieved, and the measures adopted for affirmative action should not have more harmful (invidious) consequences for the members of the other group than what is necessary in order to achieve the purpose of the affirmative action.

5. Application of economic and social rights on the basis of need

185. One approach to the restoration of equality is simply to implement, without discrimination, the economic, social and cultural rights which form an integral part of the contemporary international human rights system.

186. A particular feature of South African society, unmatched in practically any other society, is the strong correlation between race and social position. It has been the deliberate intention to block non-whites from access to higher and appropriate education, to jobs and to land; as a consequence, social position is closely related to race.

187. Recreation of equality in a deeply unequal society can be done in several ways. It can be based on objective measurements of need, irrespective of racial, ethnic or other group identity. If so, it is not affirmative action, but simply a realization of economic and social rights for everyone, based on individual merit.

188. The notion of a "New Deal" which was popularized during President Roosevelt's administration in the United States (from 1933) exemplifies some of the possible approaches. Admittedly, however, it did not substantially improve the relative conditions of the black population, probably because discrimination was still strong in many parts of the United States.

189. Where base resources (land, capital) are profoundly unevenly distributed, they can be redistributed. While this may have positive functions, it can also lead to disruptions in economic life. This is not the place to go into that complex and controversial matter.

190. Another approach is to redistribute part of what is produced in society, through direct and indirect taxation and in other ways. This leaves the pre-existing allocation of property intact, however unjust it may be, because of the efficiency connected with continuation of past arrangements, but the redistribution can provide possibilities for more equality of opportunity.

191. Such redistribution can be directed towards support, based on needs, for achieving the qualifications for equal competition in society. This can take many forms, from free education not only at the primary but also at higher levels of education, including, where required, grants to cover living expenses on the basis of need.

192. Industrial and post-industrial societies have developed their own particular solutions. In the welfare States found in Western and Northern Europe, and to some extent in other parts of the world, there is at the basis a free market economy, but combined with the transfer of some part of the product, through direct and indirect taxation, in order to ensure equal opportunities for all. There are also some constraints on over-aggressive processes of private capital accumulation. These constraints result from social reform movements which have been made possible through wide and pluralist political participation. The operation of free trade unions has also been essential in this connection. The outcome has therefore been a focus on protection or creation of equal opportunity through targeted support to those who, for one reason or another, did not have an equal starting base for participation in the economic and social life of the society, combined with a social safety net for those who, for some reason or another, still fail to secure their needs through their own endeavours.

193. Affirmative action shall not lead to the maintenance of separate rights for different racial groups. This is made clear both in ICERD article 1, paragraph 4 and article 2, paragraph 2. It is therefore different from those kinds of positive action which are intended to ensure, for minority groups, on a basis of equality with other groups, the preservation of their separate identity, if they so wish.

B. Pluralism in togetherness

1. Guidance for constructive pluralism

194. The Declaration on the Rights of National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly on 18 December 1992, shall here be taken as guidance. Admittedly, it is not legally binding. It is, however, inspired by or builds on existing international law and relevant international documents, as described in section 5 below: the International Covenant on Cultural and Political Rights, article 27; the provisions of ICERD, article 2.2; provisions in the UNESCO Convention against Discrimination in Education; on ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries; several provisions of the draft universal

declaration on the rights of indigenous peoples, the CSCE documents, including in particular the Copenhagen Document of 1991; the African Charter on Human and Peoples' Rights (which refers to peoples, not minorities); and legislative drafting now going on within the Council of Europe. It can therefore be considered to provide good guidance to present thinking on ways in which minorities should be treated. It also corresponds to practice in many, though not all, countries.

2. Protecting whose existence?

195. The existence of a minority group is a matter of fact. It does not depend on any formal act of recognition of a specific minority, be it by a bilateral treaty or by national law. Bilateral treaties may, owing to the relations between two States and often as a consequence of a peace settlement, single out a particular group for protection. However, members of all groups which fulfil the necessary criteria are entitled to protection. The existence of a group arises from the fact that its members want to maintain and develop their common characteristics, which are different from those of the majority.

196. While no formal recognition is required for a group to exist, States are called upon by article 1 of the draft declaration to take the necessary legislative measures to protect their existence and identity and to encourage conditions for the promotion of that identity. In doing so, States may consider it necessary to mention the specific groups which are the intended beneficiaries of the legislation. There is a danger that such legislation could exclude some groups. This can be avoided by referring to abstract criteria for the existence of minorities, rather than by naming them.

3. Protecting the existence of minorities: What does in entail?

197. States shall protect minorities against genocide. This includes the obligation not to kill members of the group, cause serious bodily or mental harm to any member of the group, inflict conditions calculated to bring about the physical destruction of the group, impose measures intended to prevent births within the group, or forcibly transfer their children to another group. When any of these actions are taken on the basis of the ethnicity, religion or the language of the target group, it constitutes not only a violation of human rights in general but also an act of genocide. This applies not only when the actions are taken by agents of the government, but also when it is done by a minority which is seeking to secede or to obtain complete autonomy in the region concerned.

198. Existence requires respect for and protection of basic subsistence rights. Depriving a group of the basic economic resources necessary to sustain its existence would violate the Declaration, which goes beyond prohibiting fundamental attacks on group life and obligates States to pursue a programme of active protection.

199. Existence includes continued residence in the areas where members of the minority lawfully reside. The Declaration refers to States' duty to protect existence within their respective territories. It would be a violation of human rights law to order a person to move away, to leave her or his place of

residence which has been lawfully obtained, when the order is based only on that person's ethnic, religious or linguistic identity. Policies of ethnic cleansing and forced population transfer therefore violate the standards of the draft declaration in the matter of existence, as well as in other ways.

200. Article 20 of the African Charter on Human and Peoples' Rights provides that existence is a right of peoples; operative paragraph 5 of the draft declaration of the rights of indigenous peoples provides: "Indigenous peoples have the collective right to exist in peace and security as distinct peoples and to be protected against genocide".

4. Identity: General

201. The cultural and spiritual dimensions of existence are also fundamental to the Declaration. Therefore, the identity of minorities is to be protected and conditions for its promotion encouraged. In the past, minority groups were sometimes effectively denied "existence" through policies of forced assimilation or ethnocide. It is now generally recognized, in line with the evolution of thinking within UNESCO on these matters, that each culture has a dignity and value which must be respected and preserved, to the extent compatible with universal human rights. Several provisions on preservation of group identity are now to be found in international instruments. These include provisions in favour of children (arts. 29 and 30 of the Convention on the Rights of the Child); migrant workers (art. 31 of the migrant workers Convention); indigenous peoples (art. 2 (2) (b) of ILO Convention No. 169, which refers to respect for "their social and cultural identity, their customs and traditions and their institutions"; or just "human beings" (art. 1.3 of the UNESCO Declaration on Race and Racial Prejudice). There are also references to cultural and other identities in CSCE documents, including the concluding document of the Copenhagen Meeting on the Human Dimension, and the Geneva CSCE Meeting of Experts on National Minorities of 1991.

5. Identity: Components

202. The main elements of identity are language and culture. The latter concept is vague and covers a narrow or wide field depending on the circumstances. Included in the concern with language is not only the right to use it in private and public, orally, written and through visual and electronic media, with anyone who is willing to communicate in that language, but also a right in more specific circumstances to use and be understood in that language in communication with public officials, the administration and the courts. Obviously, practical considerations come into play here; there cannot be a right to use one's own language everywhere within the State. The most elaborate international instrument dealing with this issue is the European Charter on Regional and Local Languages.

203. Language is closely related to culture, but culture is a broader concept. Language rights include a right to education in one's own language, at least during some stages of education; education, however, should also include knowledge of one's own culture as well as that of the other groups in society and of the society at large. The best guidance now is found in the Convention on the Rights of the Child, article 46.

204. States should therefore take measures in the field of education in order to encourage knowledge of the history, traditions, language and culture of their national minorities. Persons belonging to such minorities should have adequate opportunities to gain knowledge of their society as a whole.

205. Important aspects of identity, language and culture are the right to use one's own name, in the way it is used within the minority, and the right to have, in areas with substantial compact settlements of minorities, toponyms and street names in minority languages as well as the language of the majority.

6. Effective participation

206. Members of minorities should, on a basis of equality, have the same rights as others to political representation. However, this may not be of much use to them since they may be outvoted by the majorities. States, therefore, should find suitable approaches in this respect. Detailed suggestions were contained in the 1992 report (E/CN.4/Sub.2/1992/37, paras. 124-126 and 140-145).

207. With regard to their participation in economic progress and development, it is essential not only that minorities be allowed to participate in development processes, but that they be given a strong voice in projects affecting the region in which they live. Some of the most serious ethnic conflicts arise from centrally planned projects affecting regions, over which the inhabitants have had little or no influence. They consequently find their lives seriously disturbed by the projects which may benefit other members of the society, who live far away.

208. Effective participation requires that minorities be entitled to form their own associations. Freedom of information and expression is also essential for purposes of participation, as well as for other purposes such as the development of one's own culture and for the maintenance of contacts with kindred ethnic, religious and linguistic groups across borders. Freedom of information and expression includes the right to impart information in the minority language, right of access to the public media and the right of the minority to have its own mass media.

209. The right to freedom of expression is a general human right, and therefore includes the right for minorities to receive and to impart information and ideas in their own language without interference by public authorities and regardless of frontiers. It should also encompass access for minorities on a basis of equality with members of other groups, to State-owned media. Members of minority groups should have the same right as members of majorities to take up any issue, not only specific cultural issues relating to the minorities, but also general political issues. There should be no other limits to such access for members of minorities than those which apply to members of majorities. The members of minorities must be allowed to address their own constituency in their own language on general public issues of significance for the society as a whole and therefore also for them.

7. Transfrontier contacts

210. Transfrontier ethnic, religious and linguistic groups need close contacts in order to preserve and develop their language, culture and spiritual concerns. An essential counterbalance to respect for territorial integrity is the right of members of minorities to have as free and unimpeded contacts as possible with related populations on the other side of the border. In the questionnaire, States were asked whether members of minorities had such possibilities, and the responses unequivocally confirmed that they did. Members of minorities should, however, on their side show respect for the sovereign equality, territorial integrity and political independence of the States in which they live and the States which they visit.

8. Membership in a minority

211. Membership of a group may represent a balance between self-identification and acceptance by the group. Recognition of membership by the State may facilitate the application of measures for the benefit of groups, but is not the determining factor. Individuals shall not be compelled, either by the State or by the minority, to embrace membership of a minority or majority group. Group rights may not diminish individual rights. The CSCE Copenhagen Meeting on the Human Dimension stated it in the following words:

> "To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice."

9. Pluralist arrangements in practice:

Which minorities are acknowledged by States and what rights do they enjoy?

212. It would have been desirable to have made a systematic analysis of the policies pursued by States. It has been impossible to do so owing to lack of resources and time. Nevertheless, some illustrations are given below, based on the replies to the questionnaire, information contained in State reports under the conventions, and information from other sources.

213. In the Western world, the main groups taken into account are indigenous peoples and immigrants. In the Americas, a distinction is made between those settlers who came of their own free accord, initially mainly European, subsequently also from Asia and in later years in North America, immigrants from the Caribbean and Latin America also, and on the other hand the descendants of persons who were brought in as slaves, and who now constitute the Afro-American population in various American countries. The major issues in regard to minority issues in the Americas concern on the one hand the indigenous peoples and on the other hand the Afro-American populations.

214. Western European and Nordic Governments responding to the questionnaire identify as minorities primarily the Romas (Spain, Finland), indigenous peoples (Norway, Sweden and Finland) and recent immigrants, sometimes statistically divided by countries of origin.

215. In Finland, the largest minority group consists of Swedish-speaking Finnish citizens. A sophisticated system of bilingualism is in force, affecting education at all levels including universities, toponyms and street names, as well as the use of own language in public, in relations with the authorities and in government institutions. Other minority groups are the Sami and the Romas. Reporting under CCPR, the Government of Finland states:

> "In 1973 ... a permanent Sami Delegation ("Sami Parlamenta") was established, composed of 20 representatives of the Sami population. The members are appointed by the Government on the basis of elections ... Since 1986 there has been an Advisory Council for Sami Educational Affairs ... Of the 10 members, 6 are nominated by the Sami Delegation ... The Council shall in particular pay attention to the preservation and development of the Sami language and culture and advance the teaching of and in the Sami language. ... it is provided that the teaching language in the Sami areas may be Sami (instead of Finnish or Swedish. ... A government study of the legal status and rights of the Sami population is under way. ... The Finnish Romanies speak Finnish as their mother tongue even though Romany is spoken to some extent. In 1967 the Romanies organized themselves as the Finnish Gypsy Association. ... The National Board of General Education is making efforts to produce teaching material which would meet the needs of the Romany population." (Finland, CCPR/C/58/Add.5, paras. 135, 138, 139, 141 and 142)

216. According to information from Sweden, "The Constitution provides that the opportunities for ethnic, linguistic and religious minorities to maintain and develop a cultural and community life of their own shall be promoted. ... Special provisions have been made for the education of the Sami population. ... Religious communities may receive funding to help finance their religious activities and to help pay for their premises. Communities which mainly consist of immigrants can be treated more favourably than other independent communities in Sweden." (Sweden, CCPR/C/58/Add.2, paras. 285, 286 and 291)

217. On foreigners in the Federal Republic of Germany, the country report states:

> "In mid-1988 about 4.72 million foreign nationals were living in the Federal Republic of Germany. ... The policy with regard to foreign nationals pursued by the Government ... is aimed at integrating foreign workers and their families who have been resident in the Federal Republic of Germany for a long time. ... Foreign nationals with a residence permit enjoy special protection from expulsion, as do those entitled to asylum ..." (Federal Republic of Germany, CCPR/C/52/Add.3, paras. 86, 88 and 97)

218. The Government of Italy refers in its response to the questionnaire to a number of settled linguistic groups with linguistic and some territorial rights (German, French, Slovene, Occitanian, Albanian, Greek and Catalonian, and Ladin, Friulian and Sardinian-speaking peoples).

219. In Central and Eastern Europe, the lists of minorities are generally longer. Croatia and Hungary can be mentioned as examples. In Croatia, there are 16 national communities and minority groups: Albanians, Austrians, Montenegrins, Czechs, Hungarians, Macedonians, Muslims, Germans, Romanys, Ruthenians, Slovaks, Slovenes, Serbs, Italians, Ukrainians and Jews. A difference in definition has occurred with the collapse of Yugoslavia, since in the former Yugoslavia there were a number of formerly recognized "constituent nations": Montenegrins, Macedonians, Muslims, Slovenes and Serbs in addition to the Croats. With the disintegration of Yugoslavia, members of these formerly constituent nations are now considered as minorities in Croatia.

220. Concerning article 27 of the International Covenant on Civil and Political Rights, the Government of Romania reports:

> "The State recognizes and guarantees members of the national minorities the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity (Constitution, art. 6, (1)). ... With regard to education, it should be pointed out that during the school year 1991/1992, instruction was provided in Hungarian at the primary, secondary, vocational and post-secondary level in 2,428 units and sections (in which 222,826 children of Hungarian origin are studying). ... With regard to culture, it may be noted that cultural and artistic institutions for members of national minorities are financed by the State. ... The religious minorities (Romanian or other nationalities) have their own churches ... The State guarantees freedom of religious education, in accordance with the needs of each denomination." (Romania, CCPR/C/58/Add.15, paras. 181, 183, 185-186)

221. The report of Romania also states:

> "The difficulties of integrating the Romany people ... have led to an increase in the number of offences committed by members of that community. This ... explains why the people of some villages, indignant at the behaviour of the Romany people and the crimes committed by some of them, destroyed their homes and drove them out of the areas concerned. Of course, intervention by the authorities stopped these actions and those guilty have in large part been penalized." (Romania, CCPR/C/58/Add.15, para. 188)

From press reports (The International Herald Tribune, 21 July 1993), it appears that in July 1993 Romania agreed to take further steps to improve minority rights: the training of 300 more Hungarian teachers at the Babes-Bolyai University in Cluj, more classes in history and geography taught in minority languages and multilingual street signs in areas where a minority represents 30 per cent or more of the population.

222. In Hungary, comprehensive minority rights have been adopted by legislation. Distinction is made there between national and ethnic minorities. National minorities include the German, Romanian, Croatian, Serb, Slovene and Slovak minority groups. The Gypsy and Jewish ethnic groups are called ethnic minorities. The question of whether to grant the same or different status to national and ethnic minorities is currently under debate

and the issue is still open within the Jewish and Gypsy communities themselves. The dominant view within the Jewish ethnic group, according to the Hungarian reply, is that the Jews are neither a national nor an ethnic group, but form part of the Hungarian nation. The status of the Bulgarian, Polish, Ruthenian, Greek and Armenian ethnic groups is a matter under dispute. The explanation of this dispute is given as the following: A great majority of Bulgarians and Poles are not Hungarian citizens. The members of the Greek minority arrived in Hungary after 1945 and were considered to be political refugees. The Armenian ethnic group has become assimilated both linguistically and culturally, generation by generation. The Ruthenian group has likewise become assimilated.

223. The situation in the former Soviet Union remains somewhat unclear for the time being and the debate over the rights of nationalities and minorities constitutes a major element of the constitutional discussions at present taking place. In the three Transcaucasian countries (Armenia, Azerbaijan and Georgia) serious conflicts have erupted where minority groups living compactly together in semi-autonomous regions have tried to secede from the country or to obtain a confederative status. In Russia, which is a federation containing numerous ethnic groups, the status of the different ethnic groups, mary of whom had been given some kind of autonomy status at different levels during the Soviet period, remains a major cause of controversy.

224. Reporting on the International Covenant on Civil and Political Rights in 1990, article 27, the Ukrainian Soviet Socialist Republic provided the following information:

> "Non-Ukrainian nationals constitute one quarter of the population of the Ukrainian SSR. The vast majority of these are Russians. There are, in addition, Poles, Jews, Byelorussians, Moldavians, Hungarians, Greeks, Gagauz, Crimean Tartars, Bulgarians, Romanians, Karaites and a number of other nationalities ... [C]itizens of the Ukrainian SSR have the right to education, including the opportunity to attend a school where teaching is in the native language ... and the right to enjoy cultural benefits. ... The Hungarian population ... has a network of schools with teaching in the native language, a faculty of Hungarian at the University of Uzhgorod, and a number of cultural institutions and organizations." (Ukrainian Soviet Socialist Republic, CCPR/C/58/Add.8)

225. The Government of China describes China as a unitary multi-national State with a total of 56 nationalities. The term "minority nationalities" in China refers to all nationalities other than the Han nationality, which makes up 92 per cent of the total population. The other nationalities, 8 per cent of the population, nevertheless account for 91.2 million people.

226. The Government of India attaches great importance to article 18 of the International Covenant on Civil and Political Rights, but less to article 27. In its report it states:

> "This article [18] deals with the right to freedom of thought, conscience and religion. The provisions of this article are of great importance to India, which comprises people belonging to different religions, faiths and beliefs. The secular and democratic nature of Indian society demands

mutual tolerance of different religions, faiths and beliefs ... Freedom of religion as enshrined in the Constitution means freedom of all religions. ... The reference to ethnic minority [in article 27] does not apply to Indian society. The position as regards religion and culture in India has been stated above under article 18. Article 29 of the Indian Constitution guarantees the protection of the cultural and educational rights and interests of minorities. Article 29 reads:

"Any section of the citizens residing in the territory of India having a distinct language, script or culture of its own shall have the right to conserve the same.

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds of religion, race, caste or language."

227. The Indian Constitution provides suitable protection to linguistic minorities to establish and administer educational institutions of their choice. (India, CCPR/C/37/Add.13).

228. The report of Japan states:

"In Japan, no person is denied the right to enjoy one's own culture, to practise one's own religion or to use one's own language. ... As for the question of the Ainu people raised in relation to article 27, they may be called minorities under that article because it is recognized that these people preserve their own religion and language and maintain their own culture. The Ainu people ... are Japanese nationals whose equality is guaranteed under the Japanese Constitution. ... In order to improve the life of the Ainu people, the Government has been taking comprehensive measures to promote their education, culture, industry and to improve their living environment ... The living standard of the Ainu people has improved steadily, but the gap between the living standard of the general public ... and that of the Ainu has not narrowed as expected. Therefore, the Government is endeavouring to improve further the living standard of the Ainu people ..." (Japan, CCPR/C/70/Add.1, paras. 232-234 and 236)

229. In the Philippines, numerous indigenous cultural communities exist. In the reply to the questionnaire, reference is made to 95 communities, spread out over 53 provinces. They are settled communities and are recognized as bearers of the country's indigenous culture by having preserved it against foreign influence during the colonial regime in the archipelago. The Constitution (1987) provides for the establishment of autonomous regions in Muslim Mindanao and the Cordilleras. For Muslim Mindanao this has already been implemented by Act No. 6734, providing for an Organic Act for the Autonomous Region in Muslim Mindanao, of 1 August 1989.

230. Concerning Africa, the observations made by Professor Umozurike, an outstanding African expert on the question of self-determination, are revealing. He is also a former chairman of the African Commission on Human and Peoples' Rights. He has the following observations with regard to minorities and peoples in the African context:

"The African Charter on Human and Peoples' Rights has no express provisions for minorities. Nor indeed is the word 'majorities' used anywhere. It cannot be inferred that minorities are not protected; rather, the Charter applies equally to majorities and minorities. It should be stated clearly that up to the 13th session of the African Commission, no communication had been sent to it complaining about the treatment of minorities in a State. The individual rights guaranteed in the Charter apply to all persons. The nearest provision to the issue on hand deals with people. Article 19 provides: 'All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another'. So far, no issue on the meaning or import of 'people' has come before the mission. We are therefore obliged to fall back on general principles and considerations. The African Charter differs from the European and Inter-American conventions in several ways including the inclusion and use of the word people. In the very title of the Charter and in the Preambular provisions, the word is used to denote a collectivity of people as against individuals. The African Charter prides itself in not only catering for individuals but also collectivities in which the individual finds fulfilment. Man cannot survive alone and as a human is not by nature created in isolation. He lives in society and his own protection requires the protection of the society as well.

"The unit that may be referred to as 'people' is not defined. It certainly includes a group with identified characteristics such as language, religion and customs. The more substantial the number within the 'people', the easier and compelling it becomes to recognize their rights.

"On the other hand, language, religion etc. are not expressly mentioned. The problem of African minorities is different from that of, say, European minorities. It is not so much to solidify their language, culture etc.; indeed, such may detract from nation-building out of a welter of ethnic groups or clans in African countries. Their desire is more to operate freely as individuals, to be allowed to integrate with the rest if they so wish, not to be at a disadvantage only because of their difference from the rest. The intermixture of the peoples underlines the importance of human rights for the individuals and less emphasis for them as a group. The African Charter thus reflects the African situation; by prohibiting the domination of one people by another, it averts the malady in some States where a people is set upon by another people that enjoys the privilege of greater numbers. It claims the equality of peoples, much like the equality of individuals, before the law despite actual and potential inequality in fact. The provision strengthens our interpretation that the desire is not to harden or solidify a minority but rather ensure the human rights of its members."

231. These observations are confirmed by statements made by several African states, when reporting under the Covenant on Civil and Political Rights, article 27.

232. The Government of Senegal observes:

"The problem of minorities, as currently defined, does not exist in Senegal. ... Senegal has several social groups which speak different languages ... there is no such thing as the domination of one language over the other. ... [T]he three main revealed religions are practised in the country and coexist in complete harmony. ... In short, from the standpoint of article 27 of the International Covenant on Civil and Political Rights or of the Special Rapporteur's report, the problem of minorities does not exist in Senegalese society. The final point on the subject is that with such a repressive body of laws, the question of distinctions in general and minorities in particular can neither coexist with Senegalese law, nor develop in such an atmosphere." (Senegal, CCPR/C/64/Add.5, paras. 104-106)

233. The Government of Madagascar reports:

"Within the meaning of the Covenant, there is no ethnic, religious or linguistic minority living on the fringes of the community in Madagascar. ... However, there are small foreign minorities that have, in varying degrees, taken their place within the Malagasy community. They live alongside each other and are frequently fully integrated, and no law prohibits these small minorities from sharing their own cultural life, religion and language. They essentially comprise Asian minorities that settled in Madagascar many years ago, immigrants from the colonial period, some of whom practice their own religion (in particular Islam)." (Madagascar, CCPR/C/28/Add.13, paras. 240-242)

234. The Government of Algeria reports that:

"The Algerian people are characterized by homogeneity. Islam is one of the components in the national character, which was forged in a cultural crucible with many inflows. All attempts at colonialism, at denying the existence of the Algerian nation, ran up against the resistance of the Algerian people ... The different periods of Algerian history constituted a melting pot of ethnic mixtures, enriching contributions to the creativity of the national genius, which resulted in the distinctive Algerian character."

"The opening article of the Constitution states: 'Algeria is a Democratic People's Republic; it is one and indivisible'. Articles 2 and 3 stipulate that Islam is the religion of the State and that Arabic is the national and official language. Article 28 provides that Algerian citizens are equal before the law and that there shall be no discrimination on grounds of birth, race, sex, opinion or any other personal or social condition or circumstance."

"In addition to Arab and Islamic culture, Algeria also recognizes its Berber culture and its kinship with Africa and the Mediterranean. Berber is widely spoken in various regions of Algeria and used as a means of expression in many cultural and artistic events ... Berber culture and language are increasingly fostered as constituent elements of the national cultural heritage. For this reason a Department of Berber

Culture and Language has been set up within Tizi-Ouzou University. In addition to teaching the language, the Department has undertaken a series of symposia on Berber culture."

"The various elements of the national cultural heritage are fostered in order to encourage the development of pluralistic cultural expression."

"Freedom of religion and worship is covered by several articles of the Constitution ... The Christian and Jewish communities have continued since independence to enjoy freedom of religion. Their respective places of worship are protected by the Ministry of Religious Affairs." (Algeria, CCPR/C/62/Add.1, paras. 216, 218, 220-222)

235. The Government of Burundi states that it has an extremely homogeneous population, characterized by the age-old unity of its citizens, who share virtually the same political opinions or the same sentiments. Burundi does not, therefore, have minorities of any kind as understood in the questionnaire. The reply recognizes that Burundi consists of three ethnic groups, these, however, form one single people. There is no distinction between these ethnic groups, which have the same practices, the same culture and speak the same national language. (Source: Burundi, reply to the questionnaire). This gives rise to some reflections in the light of the serious ethnic clashes which took place two decades ago between the two major ethnic groups. Since then, however, there have been very substantial efforts at national reconciliation, and the information provided by the Government of Burundi probably reflects these endeavours.

236. In Latin America, there is a growing emphasis on the rights of the indigenous peoples. On article 27 of the Covenant, Venezuela reports:

"Article 77 of the 1961 Constitution states: 'The law shall establish an exceptional system required for the protection of Indian communities and their progressive incorporation into the life of the Nation' ..."

"A draft act on the Organization of Indigenous Communities, Peoples and Cultures, prepared in order to reinforce the rights of indigenous groups, is currently under discussion."

"[T]he official language in Venezuela is Spanish; for indigenous peoples, however, the legislation ... provides for the gradual introduction of bilingual education in indigenous schools."

"There are also other regulations designed to achieve environmental protection and coordinated development through provisions concerning indigenous persons ..."

"There are, however, still some difficulties in effectively implementing the protective provisions established in the Constitution, and there have been some cases of discrimination against indigenous people as individuals and groups."

"The Agrarian Reform Act also makes reference to indigenous communities ... [and] lays down the obligation to 'promote the restoration of lands, woods and waters to indigenous communities ...'" (Venezuela, CCPR/C/37/Add.14, paras. 457, 458, 464, 466, 467)

237. The Government of Ecuador reports under article 27 of the Covenant:

"There is unconditional respect in Ecuador for the rights of ethnic, religious and linguistic minorities, since article 27 (9) of the Constitution of the Republic provides for the use of indigenous languages as the main languages of instruction in schools in areas where the population is predominantly indigenous. There is also unconditional respect for freedom of religion in Ecuador; in addition to the Catholic religion, which is the religion of the majority, there are more than 200 religions and denominations in the country."

"Since the ... indigenous communities living in the Amazon region might be adversely affected as a result of the ecological deterioration of the area, the Government has devised mechanisms such as the Texaco Oil Company and Confanes Native Community Environmental Impact Study in order to find production and development alternatives leading to appropriate solutions." (Ecuador, CCPR/C/58/Add.9, paras. 191 and 192)

238. In its report under the Covenant, the Government of Colombia observes that the Colombian population includes a variety of ethnic groups which also enjoy equality before the law and to which the Government extends the same guarantees without discrimination of any kind. Under article 27, it reports:

"With regard to the ethnic minorities, the Government, aware of the wealth that ethnic differences represent for the national heritage, has in recent years pursued a policy based on such principles as the protection of the right of the indigenous population to their own territory in which to settle, their right to adopt their own organizational structures and elect their own authorities, and the right to study their own living conditions and decide on their development models."

"Indigenous communities are guaranteed the right to the use of renewable natural resources in their territories and indigenous inspectors ensure that exploitation is conducted in a rational manner."

"During the last four years, as part of the ecosystem protection policy, 72 indigenous reserves have been set up ..."

"In the area of education, Decrees No. 88 of 1976 and 1142 of 1978 recognize ethnic pluralism and establish the right of indigenous communities to a bilingual and bicultural education in keeping with the indigenous communities way of life and their special socio-cultural and economic characteristics." (Colombia, CCPR/C/64/Add.3, paras. 213, 215-217))

239. The Government of Poland reports the following:

"Although there were no formal restrictions in the Polish legal system on the rights of minorities, in practice there were many, and these irregularities have not yet been fully eliminated."

"It is necessary in particular to pursue activities aimed at developing the system of education for national minorities ... the Order of the Ministry of Education dated 21 December 1988 ... adopts the principle that instruction in their mother tongue is provided free of charge for children and young people of non-Polish nationality ..." (Poland, CCPR/C/58/Add.10, paras. 174 and 175)

240. In the report of the United Kingdom it is stated:

"In Great Britain, the ethnic minority population numbers some 2,500,000 which is 4.5 per cent of the total population ..."

"The Government is fully committed to the elimination of discrimination and the development of a fair and just society in which all individuals, whatever their race or colour, have equal rights, responsibilities and opportunities ... The Government also supports legislation, institutions and programmes which are targeted directly at tackling racial discrimination and promoting equality of opportunity."

"General education in a minority language is not offered as part of the mainstream curriculum in schools. This is because it is considered to be more advantageous to the pupil to be taught in English, the official language. There may however be initial bilingual support where a child's first language is not English. At secondary level, certain mother tongue languages may be taught as a foundation subject ... and many children from an Asian background receive mother tongue teaching outside school hours in classes paid for by the community."

"It is not the practice to use minority languages for official business." (United Kingdom, CCPR/C/58/Add.6, paras. 21, 23, 374, 375)

241. Concerning article 27 of the Covenant, the Government of Peru reports:

"Unconditional respect for the rights of ethnic, religious and linguistic minorities in Peru is fully guaranteed by article 161 of the Constitution ... Their organization, community work and use of the land, as well as their economic and administrative organization are autonomous, within the framework established by law ... In Peru there is freedom of worship and article 86 of the Constitution provides that the State has the authority to establish forms of cooperation with all religious denominations, in a system which is independent and autonomous ... Article 35 of the Constitution provides that the State shall encourage the study and knowledge of aboriginal languages. It also guarantees the right of the Quechua, Aymara and other indigenous communities to primary education in their own language." (Peru, CCPR/C/51/Add.4, paras. 109, 110 and 112)

242. Concerning article 27, the Government of Spain states:

> "In previous reports we have described the situation of the only ethnic minority existing in Spain, the gypsies, and the completely egalitarian legislation that prevents any discrimination on grounds of race or 'any other condition or personal or social circumstance', as stipulated in article 14 of the Constitution."
>
> "The Autonomous Communities, especially those containing the largest groups of gypsies, have adopted measures to integrate this minority ..."
>
> "Over the past four years, the use of the various languages spoken in Spain apart from Spanish has also been strengthened. Catalan, Galician, Mallorcan, Valencian and Basque are official languages, together with Spanish ... The relevant languages are used in education, administration, literature, the theatre and the cinema, and television and radio ..." (Spain, CCPR/C/58/Add.1, paras. 191, 196, 197)

243. Norway, which for at least a century pursued a policy of assimilation negatively affecting its indigenous people, the Sami, has reversed this policy during the last two decades. A new article 110 (a) was inserted into the Constitution on 27 May 1988: "It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life." The Sami Assembly or Parliament ("Sametinget") was established by law of 12 June 1987 and started its work in October 1989. Under additional legislation the Sami people have been given extensive language rights, in education and in communication with local public bodies. Six municipalites in northern Norway form an administrative area for the Sami language. The Sami Assembly was initially an advisory body, but authority is gradually devolving from several ministries to the Assembly. Its authority is more personal (related to Sami persons) than territorial, but both elements exist. It is different, however, from the more extensive transfer of authority by Denmark to the Faroes and Greenland, which is territorial in nature (see under section 8 below).

244. In Turkey, the new Government Programme adopted on 24 June 1993 contains the following paragraph:

> "Our Government will overcome the legal and other obstacles that hinder the free expression of our people's ethnic, cultural and language rights. This will be done in compliance with national unity and in accord with the principles of the Paris Charter. Various ethnic, cultural and linguistic groups will be permitted to develop freely. These rights will be preserved with thoughtful care and developed without fear of retribution. Our Government regards these elements as a rich contribution to society. The development of the south-east, the improvement of living conditions, the restoring of balances, the overcoming of injustice and the increase of employment opportunities will constitute indispensable and fundamental articles of policy for the south-east. For this purpose a regional development plan will be brought into effect without delay."

245. There is no doubt that this constitutes an outstretched hand to the Kurdish peoples living in Turkey and therefore a significant change in attitude by the Turkish authorities. Two points should be made in this connection: one is that it is essential to involve Kurdish representatives in the planning and execution of the development plan in the south-east; the other is the hope that Kurdish groups will now abstain from violence and use the new opportunity to find a pragmatic solution of their situation, while respecting the territorial integrity of Turkey. Should, however, militant groups among the Kurdish continue violent action, this should not lead to an attitude on the Turkish side of allocation of collective guilt. Rather, one should find the bridge-builders among the Kurds and jointly proceed with the peaceful development of the region. It is apparent that there is a growing willingness to recognize that minorities do exist and a willingness to recognize the right of these various groups to preserve their own identities. We are no longer living in a period where the dominant drive is towards assimilation, but towards integration based on endeavours to develop cooperation between different ethnic groups.

C. Pluralism through territorial subdivision and local government

1. Meaning of and issues in "territorial subdivision"

246. Sovereign States are entitled to external and internal respect for their territorial integrity. This does not exclude decentralization of authority on a territorial basis. A cursory review of existing constitutional and administrative structures of States reveals great variations in territorial structures of authority and decision-making.

247. The purposes of territorial subdivision are several, not necessarily linked to efforts to accommodate different ethnic or linguistic groups, and very seldom intended to separate religious groups. It may, however, be a useful device to facilitate the accommodation of different ethnic and linguistic groups which live compactly together in separate parts of the country. It can also have its dangers, as evidenced by the Bosnian situation.

248. Territorial subdivision is here used as a generic term to refer to all forms of local self-government within a sovereign State. The extent of local self-government can range from a minimum (local councils with authority over minor issues within the municipality) to a maximum which comes close to full sovereignty for the units concerned. It can include federalism, autonomy, regional and municipal local government.

249. Some examples of these experiences will be given below. More detailed documentation and analysis can be found in the following publications: Hannum, Hurst: Autonomy, Sovereignty, and Self-determination (University of Pennsylvania Press, 1990); Hannum, Hurst: Documents on Autonomy and Minority Rights (Martinus Nijhoff Publishers, 1993); Elazar, Daniel J. (ed.) Federal Systems of the World (Longman, United Kingdom, 1991).

250. Numerous issues arise in examining the possible arrangements for territorial subdivision. Some of them are the following. Is it based on entrenched or delegated power? Is the scope of the local self-government established in the constitution or in an international agreement so that it

cannot be changed without constitutional change or a new international agreement, or is the authority delegated by the national legislature in such a way that it can be withdrawn? Second, what is the scope of authority or competence of the regional or local self-government bodies? Third, and more important for this study, do all nationals (citizens of the country as a whole) enjoy equal human rights in all parts of the country, or do the inhabitants of the region have privileges within the autonomous region? Is there, for example, freedom of movement and residence for all inhabitants of the State throughout the whole of the national territory, in accordance with article 13 of the Universal Declaration, or is residence restricted to those who have already established themselves in that region, thus giving a priority to the members of the ethnic, linguistic or religious group concerned? Similarly, is there freedom of employment, the right to own property, including land and other fixed assets, and the right to participate in economic activity within the different regions of the sovereign entity as a whole for all inhabitants, or are there restrictions on ethnic, religious or linguistic grounds? If so, decentralization may be held by others to be discriminatory, and may thereby constitute a democratic problem. In one context it is likely to be justified: when certain traditional economic activities are reserved for indigenous peoples (reindeer herding for Sami people in the Nordic countries). The justification derives from the need to protect the conditions required for the indigenous peoples to maintain their traditional livelihood, and it is not more invidious for others than is proportionally warranted by the aim pursued.

2. The democratic functions of territorial subdivision

251. Territorial subdivision may be done in ways which make it possible for a compactly settled minority to have greater influence over political, cultural and economic decisions affecting its members. However, it should not serve to give ethnic groups their "own" state governments, but rather to bring the institutions of power and state services closer to them. Decentralization of power and the extension of autonomy to smaller territorial units may have the consequence that the group exercising local power is more homogeneous in ethnic terms than the national society as a whole. Nevertheless, the local majority will have to share power with members of other groups living in the same territorial unit. Very rarely will even the smaller unit be entirely "pure" in the ethnic sense. This means that groups which are minorities in the nation can be majorities in the region, but they will have to be as pluralistic within the region as the majority has to be in the country at large.

252. By sharing democratic power, the local majority may become more sensitive to the interests of other groups living in the same territorial unit. There will also be at that level an ethnic, cultural and possibly also linguistic mosaic which must be respected.

253. Decentralization must therefore be coupled with genuine pluralistic democratic governance in each territorial unit, with the same respect for human rights and minority rights as at the national level. Where these rights are safeguarded, the prospects for decentralization are much better; and it

could also help to ease the burden of overgrown central governments without causing fear to groups which are in a minority position within the smaller units.

254. The benefits of decentralization can be several. It reduces government overload, it facilitates pluralism within the country as a whole by diffusing power, it broadens the allocation of prestigious political and administrative functions, it facilitates the organization of mother-tongue education, to mention only a few of the benefits. Interestingly, in the transition from authoritarian to democratic rule in Germany, Italy and Spain, democratization proceeded together with peaceful decentralization from the extremely centralized governance of Hitler, Mussolini and Franco. So far, the transition from authoritarian rule in the former Soviet Union and the former Yugoslavia, which has also resulted in decentralization, has been much more violent and problematic.

3. Differences in origin and evolution

255. The origins and present evolution of territorial subdivisions are at least twofold, with many intermediate forms. Since the different contexts affect the content and scope of regional or local self-government, some reflections may be required. A federal or decentralized system may be the result of limited unification: the units have joined together but retained a reserved domain within their territorial unit (Australia, Switzerland, United States). In the case of Switzerland, the linguistic differences were one important factor in the limits set to the processes of unification, whereas ethnic, religious or linguistic differences had little to do with the federal arrangements adopted in Australia and the United States, and relatively little to do with those adopted in the Federal Republic of Germany, although cultural and religious differences played some role.

256. Federal arrangements were, in some cases, a compromise approach adopted at the time of independence from colonial rule, where different ethnic and linguistic groups with only modest linkages prior to independence had been brought under a common colonial administration. In the case of Ethiopia/Eritrea the federal arrangement was violated by the Ethiopian side under Emperor Haile Selassie, which led to protracted warfare, ending with Eritrean independence and the extensive decentralization of Ethiopia. In Nigeria, the precarious federal arrangement was placed under severe threat by efforts to concentrate power; this led to the Biafran war. Subsequent constitutional developments in Nigeria have been in the direction of increasingly extensive decentralization, which has substantially defused ethnic and religious tension, although not necessarily political tension.

257. A process of decentralization is therefore often a reaction to over-centralization, found unacceptable both because of bureaucratic overload and for linguistic, cultural or other reasons. In Europe, recent cases are those of Belgium, Italy and Spain. Territorial subdivision has been adopted either to avoid governmental/bureaucratic overload or to avoid unnecessary conflicts, or both. Intermediate cases are those where the incorporation of a particular region or enclave has been the subject of international dispute, resulting in a compromise arrangement of autonomy under some form of international guarantee.

258. The two large federations which have broken down during the last few years (the Soviet Union and Yugoslavia) were characterized by a severe ambiguity which in the end was fatal and which has had serious after-effects. On the one hand, they were based on a sophisticated system of regionalization on the basis of nationality and ethnicity. Members of the different ethnic groups (nations or nationalities) were given status by being titular nationals of union republics or autonomous republics, kraia and okrugs. On the other hand, power remained within the centralized Communist party. The territorial division of power was not given a democratic content, but served only to allocate status to ethnic groups. An elaborate arrangement involving selected representatives of the titular nationalities in the bureaucracies, the nomenklatura, gave an impression of ethnic and national power which was fictitious. It did, however, give rise to the notion that the separate republics or autonomies "belonged" to the titular ethnic group, a conception which turned out to have serious negative consequences when the federations fell apart. Instead of each of the union republics being perceived as a framework within which to build an inclusive democracy involving all inhabitants on an equal basis, it has led to an exceptionally strong process of ethnic identification in many of the republics, with corresponding quests for secession by those ethnic groups which do not belong to the dominant ethnos.

259. A number of specific autonomy arrangements have been made for minorities or groups to enjoy self-government, or "home rule", and to extend the scope of self-government over time. Examples are Greenland, and the Faroe islands. Some of these are autonomies formed on the basis of international negotiations or disputes: the Åland islands, Hong Kong, South Tirol and Cyprus. In the latter case, the initial arrangements have been suspended and the constitutional arrangements now are in abeyance, pending the outcome of negotiations for the settlement of the Cyprus conflict.

4. Successful cases

260. By the Greenland Home Rule Act, adopted by the Danish Parliament on 29 November 1978, Home Rule Authorities were set up in Greenland, comprising both a legislature and an executive. The majority of Greenlanders are Inuits, but there are also inhabitants of Danish or other origin. They are all subject to the Home Rule Authorities. The transfer of legislative and executive power from Danish to Greenlandic Home Rule Authorities is gradual and depends to a large extent on the increasing capacity of the latter to take responsibility for wider fields of government.

261. The main official language in Greenland is Greenlandic. The transfer of authority by Denmark constitutes a transfer on a territorial basis. This means that the people of Greenland, whether Inuits or those of Danish or other origin, are all subject to the Home Rule authority.

262. Belgium became independent as a unitary State in 1830.

> "245. Following on from the language legislation of 1932, the legislation passed in 1962 and 1963 laid the foundations of the principle of territoriality, which states that in monolingual regions a given language, that of the region concerned, is to be used in all affairs of

the public authorities, whatever branch of government they belong to. This legislation defined linguistic boundaries and divided the country into four linguistic regions, in an arrangement which was set out in the Constitution in 1970: three monolingual regions, French-, Dutch- and German-speaking, and the bilingual Brussels-Capital Region. In the monolingual regions all public affairs should in principle be conducted exclusively in the language of the region concerned. Only in the bilingual Brussels-Capital Region are French and Dutch used on an equal footing. Finally, the legislation allows the inhabitants of the 27 communes bordering on a different linguistic region the 'linguistic option' of asking the commune authorities to use a language other than the one of the region in which the commune is situated."

"246. The Belgian institutional system is 'an elaborate system of checks and balances'. It could hardly be otherwise in a country where, at the national level, the seats in the legislative Chambers that are filled by direct elections are allocated according to a proportional representation system that depends on the population of each electoral district ..."

"262. ... In Belgium, the Communities and the Regions are 'authorities with the same standing as the national authorities' ..." (Belgium, CCPR/C/57/Add.3)

263. In 1988, constitutional reform was carried out in Belgium, based on community conciliation, a system to fund the new entities and the establishment of institutions for the Brussels area, together with enhanced cooperation between the Government, the Communities and the Regions. With the creation of the Communities and Regions Belgium is no longer a unitary State but has taken measures that have brought it almost fully to a federal system, with some unique features. The new entities have the power to adopt legally binding decrees, they have deliberative councils and executive bodies, as well as financial means of their own. Further measures have been taken in 1993.

264. What is particularly interesting in the case of Belgium is the gradual process, based on peaceful and constructive negotiations, whereby the practical issues have been sorted out in ways which make it possible to obtain the benefits of autonomy while avoiding most of the hardships flowing from abrupt and violent quests for autonomy.

265. As mentioned above, Nigeria has gone through a process of decentralization since the Biafran war which has largely diffused ethnic tension.

"12. The fact that Nigeria comprises diverse ethnic groups has always formed part of governmental considerations in formulating policies. The basic federal and State governmental structure had always taken care of multi-ethnic issues. Ever since the pre-independence period, consideration for minority groups and ethnic multiplicity had always been the policy." (Nigerian report to CERD, CERD/C/226/Add.9)

266. Spain has recognized in its political Constitution the right to self-government of the nationalities and regions which make up the Spanish nation. The territory is divided into 17 self-governing communities, of which

5 have their own vernacular languages: Catalonia, Galicia, the Basque provinces, the Valencian Community and the Balearic Islands. In the last two communities the vernacular languages are derived from Catalan. Under the Spanish Constitution of 1978, article 137, the State is organized territorially into municipalities, provinces and any autonomous community that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests.

267. Article 2 of the Constitution reads:

> "The constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible country of all Spaniards; it recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed, and solidarity among them all."

268. The Constitution deals in chapter III with the autonomous communities. In accordance with article 143, in the exercise of the right of self-government recognized in article 2 of the Constitution, bordering provinces with common history, cultural and economic characteristics, island territories and provinces with historical regional status may accede to self-government and form autonomous communities in conformity with the provisions contained in this title and in the respective statutes. The Constitution goes on to provide details of how to establish such autonomous units, the ultimate authority lying with the Cortes Generales (article 144), the parliament of Spain. Four regions in Spain have been recognized as "historical" communities, the Basque country, Catalonia, Galicia and Andalusia. The degree of transfer of power to the different autonomous communities has been the subject of negotiations and judicial decisions in the Spanish Constitutional Court. The interesting aspect of the Spanish case, possibly a model for other situations, is the existence of a well-thought out model for gradual transfer of authority to territorial units who want it, while over-all authority is retained by the central Government, the Constitutional Court and, in particular, the Cortes Generales.

269. Gradual transfer of authority to territories with a different ethnic or linguistic majority has also been successfully pursued by Denmark in regard to the Faroe Islands and Greenland. The process has been entirely peaceful, with constructive and pragmatic negotiations between the parties.

270. There is a clear trend in Latin American countries to transfer some degree of authority to indigenous peoples. Information to that effect has been received, inter alia, from Colombia (see para. 238 above), Chile, Bolivia, Mexico, Peru and Venezuela. Nicaragua adopted in 1987 a far-reaching statute on autonomy for its regions on the Atlantic coast, in effect for indigenous peoples.

271. Other cases could have been mentioned: the Åland Islands are an autonomous area within the sovereign territory of Finland, set up under the League of Nations and functioning smoothly ever since, with elaborate provisions on the distribution of power, the most recent being those in the Act on the Autonomy of Åland, adopted by the Finnish Parliament on 16 August 1991; the long experience of that autonomous area may provide useful

lessons for similar efforts elsewhere; the Statute of Autonomy for South Tyrol of 1972; the arrangements concerning the Autonomous Region of Muslim Mindanao (Phillipines). The Swiss cantonal arrangements and the procedures (entirely peaceful) used in revising these, as evidenced by the case of the Jura (which became a new canton in 1978), can also give inspiration for similar issues elsewhere.

4. Negative and problematic cases

272. The case of Bosnia and Herzegovina constitutes the most serious warning against destructive and violent divisions of a sovereign State. It has involved the most extreme forms of violence, with only lip service being given to negotiation, and a degree of ethnic cleansing and enforced apartheid unknown in the history of the United Nations, with the exception of South Africa. The brutality demonstrated has even gone further than the excesses of apartheid.

273. The Security Council has repeatedly emphasized that territorial acquisition in Bosnia by force will not be accepted. It is essential that this principle be maintained. The United Nations must not be a party to a peace settlement based on acquisition by force.

274. The United Nations might at best contribute to a ceasefire, in order to facilitate the provision of humanitarian assistance, but with a clear determination that this will not be the end of the story, but that ultimately there will have to be a redress of the situation, a return of those who have been pushed out of the territory.

275. This may take a long time, since the United Nations and the Member States are not prepared to intervene with military force. Consequently, as in South Africa, it is a question of not accepting the apartheid system in Bosnia, even if it will take 30 years to redress the situation through a combination of sanctions and support to the peace- and bridge-builders in former Yugoslavia.

276. The United Nations should therefore be called upon to develop a more long-range policy in regard to situations of this kind, taking into account its weakness with regard to solving the problem in the short run.

277. In its resolution 713 (1991) of 25 September 1991, the Security Council recalling the relevant principles enshrined in the Charter of the United Nations and noted the Declaration of 3 September 1991 of the States participating in the Conference on Security and Cooperation in Europe that no territorial gains or changes within Yugoslavia brought about by violence were acceptable. In paragraph 2 of resolution 787 (1992) the Security Council reaffirmed that any taking of territory by force or any practice of "ethnic cleansing" was unlawful and unacceptable, and would not be permitted to affect the outcome of the negotiations on constitutional arrangements for the Republic of Bosnia and Herzegovina, and insisted that all displaced persons be enabled to return in peace to their former homes. In paragraph 7 of resolution 787 (1992), the Security Council condemned all violations of international humanitarian law, including in particular the practice of "ethnic cleansing" and the deliberate impeding of the delivery of food and

medical supplies to the civilian population of the Republic of Bosnia and Herzegovina, and reaffirmed that those that committed or ordered the commission of such acts would be held individually responsible in respect of such acts.

278. Nevertheless, the trend has unfortunately gone in the direction of accepting an ethnic division of Bosnia based on extensive bloodshed and crimes against humanity. The constitutional framework of such a division was to be built on the following principles: that Bosnia and Herzegovina should be a decentralized State, and that the constitution should recognize three constituent peoples, as well as a group of others, with most governmental functions carried out by its provinces. The provinces would not have any international legal personality and would not be able to enter into agreements with foreign States or with international organizations. Full freedom of movement would be allowed throughout Bosnia and Herzegovina, to be ensured in part by the maintenance of internationally controlled throughways. All matters of vital concern to any of the constituent peoples would be regulated in the constitution, which could be amended on these points only by consensus of these constituent peoples; ordinary governmental business would not be veto-able by any group.

279. Nothing was said in the constitutional principles about the return of those who had been the victims of ethnic cleansing. Some vague provisions were found under the "interim arrangements for Bosnia and Herzegovina", section III, containing interim arrangements for the protection of human rights. It contains the following wording:

> "The international community has repeatedly condemned ethnic cleansing and has demanded that its result be reversed. In order that the provisions of principle 8 be implemented in the interim period, the following measures will be taken, with particular emphasis placed on reversing ethnic cleansing wherever it has occurred: 1. All statements or commitments made under duress, particularly those relating to the relinquishment of rights to land and property, are wholly null and void".

280. A peaceful and democratic process of decentralization in Bosnia and Herzegovina, without any form of ethnic cleansing and based not on the ethnic groups but on the populations residing in each part, would have been acceptable. The present outcome, however, is not even remotely related to democracy. It is an extreme form of ethnocracy, and as such it might even be considered a violation not only of the International Convention on the Elimination of Racial Discrimination, article 3, but probably also of the International Convention on the Suppression and Punishment of the Crime of Apartheid, since it involves systematic ethnic (and thereby racial) segregation and includes the murder of members of ethnic or religious groups, the infliction of serious bodily or mental harm, and the infringement of their freedom and dignity, for example, by extensive rape, arbitrary and illegal arrest and imprisonment.

281. Attention should be paid in general to the dangerous and inhuman policies of "demographic homogeneity", involving population exchanges and forced removal of people belonging to other ethnic or religious groups. The

displacement carried out by Serbs and to some extent by Croats in Bosnia-Herzegovina has to be redressed; those who have occupied the houses or properties of Muslim or other groups they have displaced, should be required to vacate them. Those who have taken part in burning and looting should be required to participate in the rebuilding of homes to facilitate the return of the displaced persons. It is essential to refuse under all circumstances to accept ethnic cleansing, which constitutes a gross and systematic violation of human rights. Even if the international community is unable to stop it now, it must abstain from giving its legitimacy to the outcome and take as firm and persistent a stand as it has done during the decades of South African apartheid.

282. Another problematic case concerning territorial unity or subdivision which has to be solved in the next few years, is that of South Africa. It is another extreme case, where the extensive territorial subdivision now existing has been elaborated over four decades for purposes of domination and exploitation of the majority by a minority. Negotiations are under way on how to deal with it. The African National Council (ANC) Regional Policy Document, adopted by the Constitutional Committee and the Department of Local and Regional Government and Housing of ANC and published in March 1993, contains the following comments, which the present Rapporteur finds generally convincing (taken from Section 1, Introduction):

> "The ANC stands for a united, non-racial and non-sexist, democratic South Africa. This means we want a South Africa that is unified but not over-centralized. It must have a constitution which provides for democracy at all levels, popular participation at every level of government, and a distribution of powers and functions at national, regional and local level which will best achieve this objective, and also ensure development and eradication of inequalities created by apartheid. This can only take place within a national policy framework.
>
> "We in the ANC want democracy and development at all levels, and look forward to the private sector making an essential contribution to the nation's well-being. The South African Government, on the other hand, is really interested in creating disguised National Party-dominated homelands, even if this means wrecking the economy and even if it results in promoting population movements so as to concentrate potential voting support in regions of potential National Party hegemony. If this were to happen, the bitterness of the past will re-surface in new forms, and just as balkanization is bringing disaster to the Balkans, so would its equivalent in South Africa tear our country apart ...
>
> "The ANC wants to:
>
> - de-racialize our country, so that people can start to think of themselves politically as South Africans holding diverse views, and not as members of this or that racial, ethnic or linguistic group locked into corresponding and definite political compartments;

- progressively integrate, normalize and legitimize the structures of government so that these are no longer seen as instruments of oppression, division and corruption, but rather as the means for enabling people to live in tranquillity and get on with and improve their lives;

- discourage political mobilization on the basis of race, ethnicity or language and especially to prevent State power at any level from being used for purposes of ethnic domination, intolerance and forced removals of populations;

- democratize our land, so that people are directly involved as much as possible in shaping their destinies at every level of government;

- reduce and eliminate the massive inequalities established by apartheid, by making resources available for the advancement of those oppressed and kept back in the past by racial discrimination and gender oppression;

- progressively do away with the massive imbalances between regions and between urban and rural areas within regions;

- facilitate the development of an integrated, efficient and internationally competitive national economy; and

- enable people to take pride in their culture and language in a spirit of non-racialism, democracy and respect for the language, culture and beliefs of others.

"Healing our country, creating the conditions for economic advance, establishing a climate of peace and tolerance and embarking upon orderly and sustainable programs to improve the lives of the majority, can only be achieved by means of a national effort undertaken with a sense of national responsibility. We can never succeed if we have a multiplicity of conflicting policies carried out by a multiplicity of feuding bureaucracies."

283. A case which can give some reason to worry is that of Ethiopia. In July 1992 the Ethiopian People's Revolutionary Democratic Front proclaimed the National Charter, article 2 of which reads:

"The rights of nations, nationalities and peoples to self-determination is affirmed. To this end each nation, nationality and people is guaranteed the right to:

(a) Preserve its identity and have it respected, promote its culture and history, and use and develop its language;

(b) Administer its own affairs within its own defined territory, and effectively participate in the central government on the basis of freedom and fair and proper representation;

(c) Exercise its right to self-determination or independence when the concerned nation/nationality and people is convinced that the above rights are denied or abrogated."

284. This appears as an understandable reaction against the pre-existing over-centralized and authoritarian State power in favour of regional autonomy. In theory, this might promote freedom, democracy, equity and efficiency. There are, however, also serious risks that it might result in religious parochialism or tribalism comparable to what has been experienced in Bosnia and the Transcaucasus. In Ethiopia, as in many other situations, there is a demographic mixture of different ethnic groups (more than 80). At various times in the past, one or another of these groups have predominated in the political, cultural and economic life of the country. Some ethnic groups, such as the Oromos or southerners, claim that they have been dominated for hundreds of years by the highlanders. The declared aim of the Transitional Government is to promote the interests of all ethnic groups through a federal system of government. The location and settlement of the ethnic groups makes it impossible to draw ethnic boundaries. This would not be too much of a problem if the majority within each region were prepared to respect fully the minority groups in that region. This, however, is often not the case. The temptation to create "pure" ethnic areas leads inexorably to acts of ethnic cleansing, directed against persons who are held in one way or another to be "ethnic aliens". The temptation to draw ethnic boundaries carries a high risk of ethnic cleansing. Acts of violence appear to have been committed already, in the regions, by the locally dominant group against "aliens". UNHCR has reported serious ethnic conflicts which have caused refugee flows.

285. Many more cases of ethnic tension with serious occurrences or danger of ethnic cleansing could be reported. Among these is the demand for full independence from Ukraine by Crimea; the Abkhasian and South Ossetian secessionist struggles against Georgia, both of which have been accompanied by large-scale ethnic cleansing; the situation in Nagorno-Karabakh, and the situation in Pridnestrovye, now a part of the Republic of Moldova. It affects the left bank of the Dniestr, and, on the right bank, the town of Bendery. A particular feature of Pridnestrovye is the multi-ethnic composition of its population: Moldovans accounting for about 40 per cent, Ukrainians for 28 per cent, Russians for 26 per cent, and Gaguzi Bulgars, Jews, Byelorussians, Germans, Poles and Gypsies for about 6 per cent.

286. Armed groups have been formed and, together with Cossaks who have come to left-bank regions of Moldova claiming to define and defend Russian southern borders, are engaging in combat.

287. The population of Pridnestrovye and of the other territories mentioned are suffering as a result of the conflict. People are dying, the number of refugees is growing and human rights are being violated.

288. The conflict should, in all these cases, be solved through respect for the territorial integrity of the sovereign State within which the territory is situated, combined with a democratic process of securing the rights of members of the different ethnic groups and, where necessary, appropriate and negotiated decentralization of power. The alternative is massive and drawn-out violence which in the end will benefit no one.

D. National mechanisms for conflict resolution

289. It is of crucial importance to have channels available to deal with grievances as soon as they emerge, and to take remedial actions before members of a group feel that their legitimate concerns are neglected.

290. An increasing number of States have recognized this and various mechanisms have been established. Their nature depends on the kind of ethnic issues that exist. It is desirable to prepare a comprehensive review of such mechanisms and an evaluation of their effectiveness in facilitating peaceful and constructive solutions. Material for this purpose has not been at the disposal of the Special Rapporteur. Some examples, however, can be given, taken at random from different parts of the world.

291. In Australia, the Human Rights and Equal Opportunity Commission is required to promote understanding and acceptance, and public discussion of human rights in Australia; to undertake research and educational and other programmes, and to coordinate activities to promote human rights. Under the Racial Discrimination Act it has sought since 1987 to achieve positive changes in attitudes among the public towards Aboriginal and Torres Strait Island people and to ensure their proper treatment. In its handling of complaints, in its conciliation efforts, in its conduct of public inquiries, the Commission sees community education as central and crucial.

292. In Canada, the Human Rights Commission implements the Canadian Human Rights Act in dealing with complaints of discrimination. In regard to issues affecting indigenous peoples, the Royal Commission on Aboriginal Peoples was set up in 1991 to examine the economic, social and cultural situation of aboriginal people in Canada. One of the chairpersons is indigenous and the majority of the members of the Commission are also indigenous. In 1991, Canada also established the Department of Multiculturalism and Citizenship.

293. In Chile, the Act for the Protection, Advancement and Development of the Chilean Indigenous Peoples states in its article 29 that the National Indigenous Development Corporation (CONADI), with a view to protecting the indigenous cultures and peoples from discriminatory, derogatory and disparaging actions and behaviour, must strive to eradicate any sign of discrimination that exists in the Chilean State and society.

294. In China, Regulations on the Organization of People's Commissions on Conciliation were published on 17 June 1989. Article 3 stipulates: "A people's commission of conciliation in a multi-nationality area shall have members who represent minority groups".

295. Colombia decided in 1991 to set up the Permanent National Technical Commission on Indigenous Affairs (CONAI), as an interagency body with indigenous participation, to coordinate, follow up, evaluate and adapt government and supervisory activities on the human rights situation of indigenous communities. Support would be provided for indigenous development committees and encouragement offered to set up others in regions where they do not exist.

296. In New Zealand, the Race Relations Conciliator's Office was set up to ensure awareness of and compliance with the Race Relations Act of 1971. Issues can also be dealt with in the Human Rights Commission. Of special relevance to relations with the indigenous people, the Maoris, is the Waitangi Tribunal, which is bi-cultural in its membership and is instrumental in the resolution of grievances affecting relations between the Maori and Pakeha peoples.

297. As a result of a request by minorities for a special ministry dealing with their problems, the Government of Romania has established the Council for National Minorities. It consists of the representatives of 11 central public administration bodies and representatives of organizations of persons belonging to national minorities as these were legally established at the time of the general election in 1992. The Council for National Minorities has competence to decide on matters of standards and of administrative and financial concern, with respect to the way persons belonging to national minorities may exercise their rights so as to preserve, develop and express their ethnic, cultural, linguistic and religious identity, as stipulated in the Constitution of Romania and in the current legislation, as well as in the international treaties and conventions Romania is a party to. It is expected that the United Nations Declaration on National or Ethnic, Religious and Linguistic Minorities will form part of the basis on which the Council works.

298. In Sweden, the Act to Counteract Ethnic Discrimination established the post of the Ethnic Discrimination Ombudsman, whose task it is to take action against racism and xenophobia.

299. In the United Kingdom, the Commission For Racial Equality, set up under the Race Relations Act 1976, has the duty to work towards the elimination of discrimination, to promote equality of opportunity and good relations between persons of different racial groups generally and to keep under review the working of the Race Relations Act and if necessary to submit proposals to change it.

300. The Commission examines inter alia issues concerning the application of the law itself, non-discrimination in employment, social and cultural policy including housing, education, the administration of justice (police, courts, etc.), and health and social services.

301. These are only some examples of national mechanisms for conflict resolution. Obviously, courts can also handle complaints, but they are often too slow, too costly and cannot address properly the key issues when these have not yet been regulated appropriately in the legislation. The most important requirement for peaceful solutions is to have available mechanisms for conflict resolution which can respond to the practical issues arising from the coexistence of different ethnic, religious and linguistic groups within the same nation.

E. Obstacles to the resolution of group conflicts

302. The preceding pages have shown that in very many countries, constructive processes are continuously going on with a view to the accommodation of

different ethnic, religious and linguistic groups within the same nation. Commitment to equality, awareness of diversity and a willingness to negotiate pragmatic solutions is widespread.

303. On the other hand, we are also seeing in these years a terrible outburst of ethnic violence, which at least for the time being makes it very difficult in some places to find peaceful accommodation of the different groups. On the contrary, it is to be feared that the explosion of violence and the successful operations of the most determined, cruel and barbaric actors will lead to the legitimation of a process of disintegration of States in a long, drawn-out period of intermittent wars which may engulf not only the former Yugoslavia but also other parts of the Balkans and parts of the former Soviet Union. It may also spread to other parts of the world. Such a frightening prospect gives every reason to reflect on why this is so, and what can be done to block the process.

304. Theories of ethnic conflict are quite unsatisfactory, as of now, to explain with any degree of consistency the causes of the conflicts. There are a number of elements involved. On the one hand, ethnic entrepreneurs for their own particular purposes of political power and prestige, and sometimes also for pecuniary motives, are mobilizing on grounds of ethnicity, xenophobia and hatred. But this does not give the whole answer: there are also underlying sentiments within the populations that can be mobilized for such purposes.

305. Much can be explained by the dynamics of conflict. It takes determined ethnic entrepreneurs only a limited amount of provocation in order to obtain what they want: a violent response by the other side, which then is used as a justification for further violence on one's own side. When, also, persons with a criminal record are allowed to participate in the violence, and when people who take pleasure in killing and raping are invited to join in, the process can quite quickly escalate to what has been experienced in the former Yugoslavia.

306. It is necessary, however, also to reflect on why it is possible under certain circumstances to mobilize for violence of this kind. Probably there are elements of competition involved: competition for material resources (land, housing and other property) and for political power. This on its own does not explain what is happening.

307. It must be assumed that the conflicts arise from a negative interaction between dominant sides in both or all groups. On the one hand, a quest by the dominant group within a State to define the State in accordance with the ethnic identity of that dominant group, including the use of its language as the official language, and as far as possible to make the State the symbol and the carrier of the ethnic identity of that group. This naturally leads to a reaction by other ethnic groups who, for that reason, will have to consider themselves second-class residents or citizens, which is intensified if some of them are even denied citizenship.

308. The problem of citizenship and its denial is prominent in several of the situations now observed, and it can best be explained by the efforts to make the newly independent States (or the States which have restored their

independence) the carriers of the ethnic symbols and culture of the dominant ethnic group. To deny citizenship is an effort to exclude others from participation; the stronger the ethnic sentiment of the dominant group, the stronger the desire to exclude.

309. In many of the cases we have seen during the last few years, the problem has been intensified by fear of the future, which looks very insecure. The minor ethnic groups in the new States may not initially have experienced serious discrimination, but they are afraid that it may happen in the future. They initiate actions of secession or ethnic cleansing in order to preempt the possibility of future discrimination.

310. The speed with which these conflicts escalate makes it impossible to negotiate rationally between the parties to find solutions along the lines that have been indicated in this study.

311. Clearly, preventive action is necessary to avoid future situations of a similar kind. In pursuing such preventive action, it is essential on the one hand to try to resist the escalating ethno-nationalist quest for secession and ethnic purity; on the other hand it is equally important to intensify efforts to make all States recognize that they are the impartial protectors of the human rights and ethnic, linguistic and religious identities of different groups, some large, some small. One of the major problems is the use of the word "nation". It is not a purely semantic problem. It carries with it tremendous emotional elements, which can be mobilized for violent purposes. In this study, the word "nation" means the permanent population inside a State, normally composed of different ethnic, religious and linguistic groups. There is a Swiss nation, a Belgian nation, an Austrian nation, a Nigerian nation, and so on. It can be illustrated also by the use of the word "national" in two different political parties in South Africa, the African National Congress, and the National Party of South Africa. The African National Congress has consistently argued in favour of one nation in South Africa, which is the correct understanding of the word "nation" as used in this study. The National Party has been a party composed of the white ethnic groups, primarily the Boer ethnic group, and it is the wrong conception of "nation" which has been used by that party.

312. Whenever the word "nation" is used in an ethnic sense, it is, in this study, referred to it as "ethno-nation". The concept is a dangerous one, since it carries with it an implication that the ethnic group should have a nation which is dominated by that ethnic group, and that, preferably, all members of that ethnic group should be allowed to live inside that State; if they are not, they should have near-total autonomy within other States. It does not take much imagination to see what terrible consequences this would have if it were to be generalized beyond the situation in the former Yugoslavia.

313. This is also one of the reasons why the international community should never legitimize the outcome in the former Yugoslavia arising from ethnic cleansing and the division of Bosnia into ethnic entities. It may not be possible to stop the process at this stage, and it may be necessary to accept some kind of cease-fire and temporary arrangements in order to save the surviving peoples, but this should be seen by the international community as

only a provisional step. In the same way that the international community never accepted the ethnic solution to the problem of South Africa which the apartheid system tried to create, so the international community must never accept the ethnic solution to that of Bosnia and Herzegovina. It may have taken the international community 50 years to start the process of reversing the ethnic subdivision of South Africa, and it may take a generation or more to restore sanity in the former Yugoslavia, but it would be even worse if the international community gave its blessing to the outcome.

314. Comparable problems arise when the dominant religious group seeks to use the State as an instrument to enforce the religious rules in which that group believes. When the political system does not allow for normal democratic legislative activity and when the power of the State is used to prevent individuals from making their own free choice of religion, there is a major threat to human conscience and spiritual development. The danger does not always emerge from the State, but from parts of the population who want to obtain control over the State in order to use if for their religious purposes.

315. In this, as in other fields, the State has to leave open a common domain within which members of all religious groups, and non-believers, can feel themselves at home without fear and inappropriate restrictions, and the State may have to defend that domain against groups who want to destroy it.

316. All of this requires moderation not only from Governments and officials, but also, and in particular, from the public at large. The important question for the future is whether education and socialization can contribute to the spread of a general commitment to tolerance among ethnic, linguistic and religious groups. Guidance should be taken from the Convention on the Rights of the Child, article 29 of which spells out the threefold requirement to education. States Parties to the Convention agree that the education of the child shall be directed to:

> "(c) The development of respect for the child's parents, his or her own cultural identity, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own". Important is also
>
> "(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origins".

317. If all States take this seriously, new generations may emerge who are able to combine love of their own ethnic, religious or linguistic identity with a warm and positive attitude to the bearers of other traditions, religions and cultures, recognizing the enrichment they can enjoy by learning from and stimulating each other rather than hating or excluding each other and thereby impoverishing themselves.

III. ROLES OF THE INTERNATIONAL COMMUNITY

318. This study deals with constructive approaches at the national level. The international community can help to facilitate national efforts. A few observations only on this subject will here be made.

Non-intervention

319. It is essential for the maintenance of international peace and cooperation that external intervention and external incitement to hatred and xenophobia be avoided; otherwise, resolution of conflicts at the national level will become more difficult. It is probably unavoidable that Governments of outside States sometimes are under pressure from their public to become involved when minorities in neighbouring States are alleged to be subjected to severe discrimination or denial of identity. Such pressure will be particularly strong when the minority concerned is of the same ethnic or linguistic group as the majority in one's own State. To yield to such pressure, however, or to incite or encourage the minority in the other State to resort to violence, is deeply destabilizing and should be avoided. However, such abstention requires the availability of constructive alternatives for action within regional organizations or in the United Nations.

320. The United Nations has an important role to play in promoting the political and social stability of States. The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities states in preambular paragraph 5 that the promotion and protection of the rights of persons belonging to minorities contribute to the stability of the States in which they live. The task for the United Nations and regional organizations is to assist in the protection and promotion of the rights of minorities in such a way that the political and social stability of the State concerned is in fact improved, rather than weakened. This guideline should be followed also by non-governmental organizations.

International normative basis

321. The international normative basis now exists, as pointed out in chapter I, section D of this study. One road to further normative elaboration is through the use of bilateral treaties containing reciprocal obligations for States to protect and promote the existence and identity of minorities inside their State. A growing number of such bilateral treaties have been adopted in recent years, mainly between States in Central and Eastern Europe. Some deal solely with minority protection; others include such provisions in more general treaties on cultural and other forms of cooperation.

322. The substantive content of some of these bilateral treaties is closely modelled on the Copenhagen CSCE Document of 1990. That text, in turn, has many similarities with the 1992 Declaration on minorities of the United Nations. Thus, in regard to many minorities the normative evolution at the international level (CSCE and the United Nations) has already been consolidated in treaty law. It needs to be borne in mind, however, that members of minorities not explicitly mentioned in bilateral treaties are also entitled to international protection.

323. When conflicts or disputes arise, channels should be available through which to address the claims. Different types of situations could be envisaged. A categorization has been made in a recent article by Gudmundur Alfredson and Danilo Türk entitled "International mechanisms for the monitoring and protection of minority rights", in Monitoring Human Rights in Europe (Arie Bloed and others, Nijhoff, 1993). They distinguish between three sets of situations: (a) activities in situations not characterized by an open conflict; (b) activities in situations characterized by an open political conflict, including those which involve a certain amount of violence; and (c) activities in situations which may constitute a threat to international peace and security.

324. In situations not characterized by open conflict, a range of mechanisms and institutions exist. Their use could serve in a preventive way to facilitate constructive solutions. Existing treaty bodies operating under international human rights conventions all have important roles to play. These could be further developed, inspired by the 1992 Declaration.

325. A key role could be played by the Committee on the Elimination of Racial Discrimination (CERD), which also deals with ethnic discrimination. As pointed out in chapter II, section A of this study, this Convention is the main instrument for the preservation of equality within the common domain, the basis for all other solutions to minority situations.

326. State reports to the Human Rights Committee provide information under article 27 of the Covenant on Civil and Political Rights on the treatment of minorities. The Committee also receives communications from individuals under the Optional Protocol, alleging violations of article 27. The Committee is therefore in a position to help in preventing conflicts which could become serious if they were not addressed at an early stage. The Committee might in its interpretation of article 27 take into account the 1992 Declaration.

327. The Committee on Economic, Social and Cultural Rights already addresses minority issues in its handling of state reports. Apart from reviewing the implementation by States of their general obligation to ensure the enjoyment of the human rights listed in the Covenant without discrimination, specific questions related to minorities are raised, for example, under article 11 (adequate standard of living), such as questions about guarantees of access to adequate food, to housing and other basic needs for vulnerable or disadvantaged groups, who in many circumstances are members of minorities. Efforts to obtain such information and to remind States of the need to redress situations of unequal access for minorities are a positive contribution to the promotion of minority rights. Under article 13, dealing with the right to education, the Committee on Economic, Social and Cultural Rights addresses questions of linguistic facilities, such as availability of teaching in the mother tongue of the students.

328. On language and education, the role of UNESCO is pre-eminent, including its handling of the Convention Against Discrimination in Education, which in article 5 (1) (c) emphasizes the right of members of minorities to carry on their own educational activities.

329. The Committee on the Rights of the Child, the newest treaty body, is also called on to review minority issues. Article 29.1 (c) of the Convention on the Rights of the Child requires that the education of the child shall be directed, inter alia, towards the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own. Implementation of this provision will be a significant contribution to the creation of a spirit of tolerance for pluralism in society. Article 30, which covers children of minorities and of indigenous peoples, corresponds to article 27 of the Covenant on Civil and Political Rights. In its dialogue with States Parties over the implementation of article 30, the Committee on the Rights of the Child has an additional, constructive role to play in promoting pluralism in togetherness.

330. Reporting under all of these conventions can have a significant preventive function. The interaction between the Committees and the States submitting reports can be a constructive dialogue. Members of the treaty bodies should seek to understand not only the legal situation in the country concerned, but also the nature of actual or potential conflicts, particularly those related to group tension. They should use their best endeavours to suggest appropriate ways of responding to tension arising from the coexistence of different groups. Through the examination of reports, the members of the treaty bodies also obtain a knowledge of the situations which can be significant as an early warning about brewing conflicts.

331. The International Labour Organisation deals with issues relating to tribal and indigenous peoples in independent States. UNICEF, in its effort to protect children, can use the provisions of the Convention on the Rights of the Child to focus on improvement in conditions affecting children of minorities.

332. At the regional level, the Council of Europe is in the process of developing instruments and policies regarding minority issues. Should the Council of Europe complete its preparation, which it is likely to do in September 1993, either of a protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, or a separate convention on the rights of members of minorities, its role would be significantly strengthened.

333. The Conference on Security and Cooperation in Europe (CSCE) has developed mechanisms which can be used also for minority issues. Most important has been the appointment, in 1992, of the High Commissioner on National Minorities. His mandate is to provide early warning and, as appropriate, early action, at the earliest possible stage in regard to tension involving national minority issues which has the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States. It is intended as an instrument of preventive diplomacy. The task is therefore not directly the protection of minorities, but to be an instrument for investigation and resolution of ethnic tension at an early stage. In this task he is nevertheless likely to take guidance from internationally recognized rights of members of minorities, in particular the CSCE Copenhagen Document of 1990.

334. In situations where conflicts already are manifest and some violence already has occurred, human rights mechanisms dealing with gross and systematic violations (the 1503 procedure and country rapporteurs) become relevant. Experience has now been obtained through the activities of the Special Rapporteurs of the Commission on Human Rights on Romania and on Iraq. In both cases, issues relating to minority conflicts were prominent in violations giving rise to the appointment of the Special Rapporteurs. In the case of Romania, the Special Rapporteur has engaged in a constructive dialogue with the Government following the political changes that took place in Romania after his appointment. Those changes led to a growing willingness on the part of the new Government to deal more constructively with the minority issues. Useful experience has also been gained from the efforts of the independent expert on the situation of human rights in Guatemala.

335. In situations where groups are in conflict, mere condemnation of violations is not enough. The parties must be helped and encouraged to find a way out of the spiral of violence.

336. Different parts of the United Nations system and regional organizations and humanitarian bodies could be brought together to facilitate finding solutions, guided by the principles of the Charter and human rights requirements.

337. When the conflict has escalated into substantial violence threatening international peace and security, the primary role will be with the Security Council. Nevertheless, human rights bodies continue to have their role to play, as evidenced by the situation in Yugoslavia. Not only was the Human Rights Commission convened for a special session dealing with Yugoslavia, but the Special Rapporteur appointed by the Commission on Human Rights provided the Security Council with information about the gross violations that have taken place in the territory of the former Yugoslavia. This contributed to the Security Council taking the decision to establish an international tribunal to deal with war crimes in the former Yugoslavia. The Special Rapporteur of the Commission on the situation of human rights in Iraq has also presented information to the Security Council, thereby providing a basis for assessing the human rights aspects, including the minority problems, involved in that case.

338. The roles which are played and could be played by international non-governmental organizations should also be addressed. They face a difficulty as far as group conflicts are concerned. Minority problems do not always arise as a consequence of violations by the Government; they may also originate from the minority side as demonstrated in the case of Bosnia. Whatever the origin, once the conflict has escalated into a spiral of violence, violations are frequently committed both by the minor and the major groups. Traditionally, non-governmental human rights organizations have been preoccupied solely with the question of violations committed by, or under the responsibility of, Governments. Facing group conflicts, non-governmental

organizations - if they want to retain the principle of impartiality - also have to address violations committed by non-governmental entities, including militant elements among the minorities. Otherwise, human rights advocacy can turn into special pleading in favour of one group, which in turn can become an encouragement of continued violence rather than an effort to find a constructive solution to the problem. Most non-governmental organizations are aware of this danger, but it needs to be underlined that the task should be to assist in the constructive solution of conflicts, not to exacerbate it.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

Material for the conclusions

339. The following conclusions are based on the preceding study and also draw on six expert papers which were prepared for a technical seminar, organized by the Centre for Human Rights from 2 to 4 February 1993, in preparation for this study. The papers, which are contained in an annex to this report, are the following: Professor Vojin Dimitrievic, "New and old minorities and the loss of status acquired in former 'Socialist' States"; Professor Yash Ghai, "Legal responses to ethnicity in South and South-East Asia"; Professor U.O. Umozurike, "National experiences regarding the peaceful and constructive solution of problems involving minorities in Nigeria"; Professor Claire Palley, "The relevance of population transfers to minority rights"; Professor Valery Tishkov, "Nationalities and conflicting ethnicity in post-Communist Russia"; and Professor Rüdiger Wolfrum, "The emergence of 'new' minorities as a result of migration".

Foundation: Equality in dignity and rights

340. The study is based on the premise that international human rights law is concerned, above all, with the equality and dignity of every human being. It therefore sets limits to the collective rights of both majorities and minorities, in the sense that none of them can be used to overrule the freedom and the equal dignity of the human being. Privileges should not be established for majorities or for minorities. There should be a common domain within the national society, based on the principle of equality and non-discrimination for everyone having the State as their common home. The State should not be the "property" of one ethnic, religious or linguistic group, whether majoritarian or minoritarian (as has been the case in apartheid South Africa).

341. What is required of the State in the common domain is to respect the universally recognized human rights in its dealing with all the inhabitants of the country; to protect those human rights against violations by private or non-state entities, and to assist their inhabitants in enjoying their human rights by the necessary positive measures on a basis of equality.

Affirmative action and preferential treatment

342. In the pursuit of equality, affirmative action is sometimes required. In the study, reference has been made to the situation in South Africa and to the need for affirmative action in the near future to redress the vast inequalities generated by past apartheid policy. On the other hand, there are also problems with affirmative action or preferential treatment, as shown by Yash Ghai in his paper on Asian experiences. As required by the Convention on the Elimination of all Forms of Racial Discrimination, such measures should be transitional and not be maintained when the purpose for which they were initiated has been achieved. Preferential treatment within the common domain which goes beyond permissible transitional affirmative measures are destabilizing and can be the cause of much friction. Nor does affirmative action necessarily provide benefits to those who need it the most - the most vulnerable among the groups discriminated against. In some situations, they tend to benefit mainly the middle class and those even better off among the groups entitled to affirmative action. In many circumstances, better results with less friction could be obtained through a systematic implementation of economic, social and cultural rights.

Citizenship and minority situations

343. The enjoyment of equal rights by members of minorities is affected by their citizenship situation. This has turned out to be a serious problem resulting from the recent dissolution of federations and other larger entities. As a general rule, an automatic option of citizenship ought to be available for those who, under the legal system in force prior to the dissolution, had become lawful residents in a territory which has subsequently emerged or re-emerged as an independent State, irrespective of their ethnic, religious or linguistic background and of the location of their birth or that of their parents.

344. The problem of citizenship is different in cases where populations have been transferred to territories occupied by force but not incorporated into the territory of the occupying States. In such cases, those transferred are necessarily aware that they have arrived in a territory which does not form part of their own State. They are at no point in time the citizens of the territory to which they have been transferred. When the occupation ends, they must face the fact that they are aliens in an independent country. Their situation should be treated with humanity. Probably the same would apply to populations transferred to territory which has been occupied in violation of the Charter of the United Nations, even if the territory has been incorporated into the territory of the occupying State, provided that the United Nations through its competent bodies, has challenged the legality of the incorporation at the time it was made and at no time has accepted the incorporation as legally valid.

345. These and other problems arising from population transfers have been examined in the paper prepared by Claire Palley for the technical seminar.

Pluralism in togetherness

346. The material collected has shown that there are increasing efforts in many parts of the world to accept the preservation of identity by members of different ethnic, religious and linguistic groups, particularly those belonging to settled groups. The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities can in the future serve as guidance for such efforts. The study has described numerous innovative efforts by States to create conditions in which the different groups inside the national society can preserve their identity. Practical limitations have to be observed. There will be a need for at least one common language, in which all inhabitants can communicate with one another. The State must also adopt and maintain a number of common rules ensuring equality and solving problems of common welfare and security for all members of society. Such efforts have a certain unavoidable homogenizing effect. However, within the limits set by this requirement, there are numerous options available. The question of language rights is central, as is the possibility of having education about one's own culture and tradition. Both of these elements are now well articulated in articles 29 and 30 of the Convention on the Rights of the Child, to which a large number of States have already become parties. The practice of the Committee on the Rights of the Child may in the future be an interesting guide to the way in which pluralism in togetherness is unfolding.

347. Professor Umozurike has argued, in his paper, that the problem of minorities in Africa may be different from that of Europe.

> "It is not so much to solidify their language, culture, etc. - indeed such may detract from nation-building out of a welter of ethnic groups or clans in African countries. Their desire is more to operate freely as individuals, to be allowed to integrate with the rest if they so wish, not to be at a disadvantage only because of their differences from the rest."

Pluralism by territorial subdivision

348. This is more problematic. The study has demonstrated its wide use, particularly in large States through federal structures or autonomy arrangements, but it occurs also in several smaller States. It is essential to ensure that the territorial subdivision is given a democratic content and complies with human rights requirements. The purpose of territorial subdivision is not to give ethnic groups their "own" state governments, but to bring the institutions of power and the service of the State closer to them. While decentralization of power from the centre and the extension of authority to smaller territorial units lead to more homogeneous ethnic composition and make it possible for ethnic groups to create conditions under which they can preserve their identity better, the local majority will have to share power on a democratic basis with members of other groups living in the same territorial unit. Almost never will even the smallest unit be entirely "pure" in the

ethnic sense, and it should also not be a goal for which to reach. This means that groups which are minorities in the nation can be majorities in the regional subunit or autonomy, but they have to be as pluralistic within the region as the majority has to be in the country at large.

349. A fuller discussion of these problems, taking into account the particular difficulties facing the Russian Federation in the post-Communist period, is contained in the paper by Valery Tishkov.

Minority problems in times of transition

350. Some of the most harsh conflicts have occurred in times of transition. When radical changes have occurred simultaneously in the dominant ideology, the political structure and the economic system, as was the case when the former Soviet Union and Yugoslavia were dissolved into their constituent republics, the different groups have had great difficulties in adapting to one another. The rather unfortunate use of ethno-national status by the larger ethnic groups under the previous system gave rise to the notion of acquired rights, which have been thrown into jeopardy by the transition now taking place. The most tragic and severe consequences have been experienced in the former Yugoslavia, but widespread suffering arising from tensions caused by such abrupt transition can be observed also in the Transcaucasian region, and in several other places in the former Soviet Union.

351. Transition to democracy makes it impossible to maintain privileges based on ethnic, linguistic or religious grounds. On the other hand, there should be effective protection of the right to preserve one's identity and also to preserve one's right not to be discriminated against on ethnic grounds in the new States. Fear of the future, insecurity in terms of protection both of identity and from discrimination, has created grounds for political mobilization by ethnic entrepreneurs which has caused some of the worst tragedies that Europe has seen since the end of the Second World War. With hindsight, it might possibly have been avoided by earlier preventive measures by the international community.

Role of the international community

352. A dual concern has been expressed in the study. On the one hand, external States and other external actors should not unilaterally intervene in group conflicts or encourage hatred and xenophobia. On the other, there is a need for channels within regional organizations or the United Nations for addressing group issues within sovereign States. Many such opportunities exist and could be made better use of, guided by the new Declaration on the Rights of Members of National or Ethnic, Religious or Linguistic Minorities. In the light of the severe violations of human rights accompanying many group conflicts, however, there is an urgent need to strengthen the existing institutions and their procedures, and also to develop new mechanisms.

353. Some non-governmental organizations play important roles in facilitating bridge-building and pluralism in togetherness. Central among these is the Minority Rights Group, which has a long and distinguished record of promoting concern for the right of minorities to preserve and develop their identity within sovereign States. Some non-governmental organizations are devoted to the resolution of group conflicts. One of these is International Alert. Many more non-governmental organizations are concerned with minority rights as part of their general human rights work. A few organizations, however, appear to subordinate consistent advocacy of human rights for all - whether members of majorities or minorities - to policies of solidarity with particular groups, which may weaken their ability to promote human rights generally.

Notes

1/ Nathan Lerner, Group Rights and Discrimination in International Law. Martinus Nijhoof Publishers, Dordrecht/Boston/London 1991, p. 163.

2/ Wojciech Sadurski, as quoted by Lerner, op. cit. (note 1) p. 163.